SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

LOCAL No. 6167, UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AFFILIATED WITH THE INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL., PETITIONERS,

vs.

JEWELL RIDGE COAL CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA

Civil Action No. 73

JEWELL RIDGE COAL CORPORATION, Plaintiff

v.

LOCAL NO. 6167, UNITED MINE WORKERS OF AMERICA, et al., Defendants

STIPULATION OF COUNSEL AS TO CONTENTS OF RECORD—Filed April 12, 1944

It is hereby stipulated and agreed between counsel for the parties to the above entitled proceeding that the record on appeal consist- of the following:

(1) Complaint of plaintiff.
(2) Answer of defendants, including counter-claim of employee defendants.
(3) Amendment to answer and counter-claim.
(4) Plaintiff's answer to counter-claim.
(5) Order of October 30, 1943.
(6) Pre-trial order of November 5, 1943.
(7) Order of November 24, 1943.
(8) Transcript of evidence and exhibits, including the map filed by the plaintiff.
(9) Defendants' request for findings of fact.
(10) Opinion of the Court, embracing findings of fact and conclusions of law, dated Jan. 25, 1944.
(11) Judgment and order of January 25, 1944.
(12) Notice of Appeal, with date of filing.
(13) This stipulation.

(S.) George Richardson, Jr., of Counsel for the Plaintiff. Frank W. Rogers, of Counsel for the Defendants.

[File endorsement omitted.]

[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA

Civil Action No. 73

JEWEL RIDGE COAL CORPORATION, a Corporation, Plaintiff,

v.

LOCAL NO. 6167, UNITED MINE WORKERS OF AMERICA, an unincorporated association, affiliated with the International Union, United Mine Workers of America; Harlan Hampton, President; John A. White, Vice President; Omer Ketron, Recording Secretary; James W. Belcher, Financial Secretary; C. M. Mathena, Treasurer; Tony Farnese, Door Keeper; Individually and as Officers of said Local No. 6167;

CARL ALTIZER, OMER KERTON and T. V. WHITE, Individually and as Members of the Mine Committee of said Local No. 6167; H. D. Hampton, Tony Farnese, and James Al Smith, Individually and as Members of the Safety Committee of said Local No. 6167;

LOCAL NO. 7337, UNITED MINE WORKERS OF AMERICA, an unincorporated association affiliated with the International Union, United Mine Workers of America; J. H. Sheppard, President; J. E. Collins, Vice President; Forrest Ritchie, Recording Secretary; Josh Keen, Financial Secretary; C. F. Clark, Treasurer; Lyss Patrick, Door Keeper; Individually and as Officers of said Local No. 7337;

JOSH KEEN, J. A. WHITE and PAUL SYKES, Individually and as Members of the Mine Committee of said Local No. 7337; Walter Jackson, J. S. Walker and Glenn Crouse, Individually and as Members of the Safety Committee of said Local No. 7337;

DISTRICT NO. 28, UNITED MINE WORKERS OF AMERICA, an unincorporated association, affiliated with the International Union, United Mine Workers of America; John Saxton, President, and W. F. Minton, Secretary-Treasurer, individually and as Officers of said District No. 28, and

[fol. 3] INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, an unincorporated association and JOHN L. LEWIS, individually and as President of said International Union, Defendants.

COMPLAINT—Filed July 30, 1943

I

Allegations of Jurisdiction

1

Plaintiff is a corporation organized under the laws of Virginia, having its principal office in Tazewell County in the Western District of Virginia.

Defendant, Local No. 6167, United Mine Workers of America, is an unincorporated association, located and doing business in the Western District of Virginia.

Defendants Harlan Hampton, John A. White, Omer Kerron, James W. Belcher, C. M. Mathena, Tony Farnese, Carl Altizer, T. V. White, H. D. Hampton, and James Al Smith are officers and committeemen of Local No. 6167, United Mine Workers of America, as listed in the caption hereto, and are citizens and residents of the Western District of Virginia.

Defendant, Local No. 7337, United Mine Workers of America, is an unincorporated association, located and doing business in the Western District of Virginia.

Defendants J. H. Sheppard, J. E. Collins, Forrest Ritchie, Josh Keen, C. F. Clark, Lyss Patrick, J. A. White, Walter Jackson, Glenn Crouse, Paul Sykes and J. S. Walker are officers and committeemen of Local No. 7337, United Mine Workers of America, as listed in the caption hereto, and are citizens and residents of the Western District of Virginia.

Defendant District No. 28, United Mine Workers of America, is an unincorporated association, affiliated with the International Union, United Mine Workers of America, located and doing business in the Western District of Virginia.

Defendants John Saxton and W. F. Minton are officers of said District 28, as listed in the caption hereto, and are citizens and residents of the Western District of Virginia.

Defendant International Union, United Mine Workers of America, is an unincorporated association, doing business in the Western District of Virginia.

Defendant John L. Lewis is President of said International Union and is a citizen and resident of the Eastern District of Virginia.

2

The matters in controversy exclusive of interest and costs, exceed the sum of Three Thousand Dollars ($3,000.00).

3

The action asires under a certain law of the United States, to wit: The Act of June 25, 1938, cited as The Fair Labor [fol. 4] Standards Act of 1938 (52 Statutes at Large 1060-9, 29 U. S. C. 201-219), hereinafter referred to as the Act, and is for a judgment declaring the rights and legal relations of the parties, together with such injunctive relief as may be proper under the provisions of the Federal Declaratory Judgment Act, Title 28, U. S. C. A. 400, the Judicial Code, Section 274(d).

The action is also to secure such other, further and general relief as may be proper in the premises.

II

Plaintiff's Mining Operations

1

Plaintiff owns and operates in Tazewell County and Buchanan County, Virginia, two mines for mining and preparing bituminous coal for sale. Approximately 500 workers at plaintiff's Jewell Ridge Mine in Tazewell County, and approximately 400 workers at its Jewell Valley Mine, in Buchanan County, are employed in duties required to be performed underground. There are approximately 70 outside employees at the Jewell Ridge Mine and approximately 40 outside employees at the Jewell Valley Mine. Coal extracted from said mines is prepared by the plaintiff at or near the mines and is sold and shipped into various states of the United States. The seam or vein of coal worked in said mines varies in thickness from approximately 36 minches to approximately 48 inches. The coal is mined by being cut mechanically, shot down with ex-

plosives, loaded by workmen into mine cars, and drawn by electrically operated motors from the working places in the mine where the cars are loaded to the tipple where it is received, prepared and loaded into railroad cars.

2

The seam of coal worked and operated by plaintiff in its said mines is at an elevation above that of the railroad tracks serving said mines and the mining operations in said seams are carried on through what is known as a drift mouth, or portal, through which tracks laid horizontally and approximately level extend back underground to the working "face" where the coal is actually mined.

3

The underground workers when going to work in plaintiff's said mines enter the mines and proceed to their working places either on foot and at such times as may suit their convenience, or, at their option, by means of man trips operated by plaintiff for the purpose of taking the workers to their respective working places in the mines. Such man trips are motor drawn trains of mine cars for the transportation of workers only which leave the drift mouth, or portal, of the mine at stated times, according to the section of the mine to which the particular man trip is proceeding. The point of beginning the man trips is fixed by the plaintiff at a place conveniently accessible to its underground workers, so as to serve their convenience rather than to minimize the travel time from portal to working place. Those workers who enter other than by the man trips do so through various openings at their own election.

[fol. 5]

4

No underground worker does for the plaintiff any of the work he is employed to do or is on call or subject to direction in the performance of his duties in the employment of plaintiff until he arrives at his usual working place, wherever that may be.

5

At the conclusion of their day's work, which, as hereinafter shown, means seven hours work in the mines at the usual working places for all classes of labor, exclusive of

the lunch period, whether they be paid by the day or be paid on the tonnage basis, plaintiff's underground workers return to the outside afoot, by such way as they wish to go, or, at their option, on a man trip provided by plaintiff for their return to the portal.

6

Computing the entire time elapsed from the entrance of the several man trips into the portal of the mine until their return at the end of the working day, the workers employed in plaintiff's Jewell Ridge Mine consume on an average for each man approximately 88 minutes each working day in traveling from the mine portal to the usual working places and thence back to the mine portal, and, in like manner, the workers employed in plaintiff's Jewell Valley Mine consume on the average for each man approximately 67 minutes. The exact time consumed by the several workers in traveling to and from their working places varies among the sections and the individual workers.

7

Plaintiff formerly operated its mines two shifts each day not exceeding five days a week. But in compliance with the Executive Order of the President of the United States, issued February 9, 1943, in respect to the effective utilization of manpower and Memorandum of Agreement between the United Mine Workers of America and Southern Coal Producers Association made February 10, 1943, plaintiff has operated its said mines two shifts of seven hours each day for six days in each workweek.

III

Wage Agreements

1

At all times, since the effective date of the Act, namely, October 24, 1938, and for a number of years prior thereto, plaintiff has operated its said mines under wage agreements negotiated with its mine workers through defendants' Local No. 6167 and Local No. 7337 and District No. 28, and the International Union, United Mine Workers of America, as the representatives of plaintiff's employees

for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. The latest agreement so made between the plaintiff and its said mine workers is the Southern Wage Agreement together with the Smokeless Wage Agreement and local Agreement made pursuant thereto, all effective April 1, 1941, until March 31, 1943, subsequently by agreement of the parties extended through the 30th day of April, [fol. 6] 1943, and thereafter with such modifications as were contained in the directive order of June 18, 1943, further extended by the National War Labor Board. The said Wage Agreements prescribe conditions of employment and rates of pay applicable to all of plaintiff's mine workers. The provisions of said agreements as to maximum hours, working time and overtime are for convenience here set out, to wit:

"Maximum Hours and Working Time

"Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the unual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

"Overtime

"Work by Mine Workers paid by hour or day in excess of seven (7) hours in one day or thirty-five (35) hours in any one week shall be paid for at the rate of time and one-half with the following exceptions:

"Mine Workers engaged at power houses, substations, and pumps operating continuously for twenty-four (24) hours daily are especially exempted from the seven (7) hour day and the time and one-half provisions. Special exemptions for individual Mine Workers other than those named above when twenty-four (24) hours continuous operation daily is required are subject to arrangement between mine management and

district officers without time and one-half for overtime. Mine Workers so especially exempted are limited to eight (8) hours per day and forty (40) hours per week and time and one-half for time worked in excess thereof.

"The seven (7) hour day, five (5) day week (35 hours per week) as provided in this Agreement shall prevail.

"The following classes of Mine Workers are exempted from the foregoing provisions as to maximum hours of work.

"All Mine Workers engaged in the transportation of men and coal shall work the additional time necessary to handle man-trips and all coal in transit and shall be paid the regular hourly rate for the first seven (7) hours and time and one-half for all overtime.

"Outside Mine Workers engaged in the dumping, handling and preparation of coal, and the manufacture of coke, shall work the additional time necessary, not to exceed thirty (30) minutes, to dump and prepare the coal delivered to the tipple each shift, and complete the usual duties incidental to the operation of coke ovens, and shall be paid the regular hourly rates for the first seven (7) hours and time and one-half for overtime not to exceed the thirty (30) minutes hereinbefore stated.

[fol. 7] "When day men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours, but after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished inside day men, the employer may furnish other than the regular work.

"Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

"Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time

required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named. Motormen shall at all times take proper care of the motors and the customs prevailing at each mine relative to greasing and oiling the motors and filling sand boxes and reporting on the conditions of the motors shall continue during the life of this Agreement."

2

Under date of February 10, 1943, a certain supplemental Memorandum of Agreement was made by and between said International Union, of the one part, and Southern Coal Producers Association and others, of the other part, representing the same parties as those in the above-mentioned agreements of 1941. The provisions of said supplemental Memorandum of Agreement are, for convenience, here set out, to wit:

It is agreed that the current Joint Agreement, known as the Southern Wage Agreement, and District Agreements subsidiary thereto, between the United Mine Workers of America and the before-named Associations, is amended and modified as follows:

(A) The basic work week of thirty-five hours per individual employed shall be agreed as beginning on Monday of each week.

(B) The six day workweek is authorized, provided that all individual mine workers working in excess of thirty-five hours in any one week, beginning on Monday of each week, shall be paid time and one-half or rate and one-half for such work as the case may be. This arrangement shall cover day and monthly men, tonnage, yardage and deadwork rates.

[fol. 8] (C) Holidays may be worked, provided the coal company, the District Organization and the membership of the Local Union agree upon such holiday work. Time and one-half and rate and one-half shall be paid for holiday work.

Such payment for holiday work shall not interfere with the payment of time and one-half and rate and

one-half for work done on the following Saturday in the same week.

(D) No mine worker shall be fined or penalized for absenteeism affecting Saturday or holiday work.

This supplemental agreement, negotiated between the contracting parties signatory hereto, shall be in effect until the date of expiration of the basic Southern Wage Agreement, namely Midnight, March 31, 1943.

3

The aforesaid Wage Agreements of 1941 were next preceded by the Appalachian and Pocahontas-Tug River Agreements made May 12, 1939, effective from that date until March 31, 1941, and said agreements were in turn next preceded by the Appalachian Agreement made April 2, 1937, and the Smokeless Wage Agreement made pursuant thereto, effective April 1, 1937, for the period expiring April 1, 1939, all obligatory upon the plaintiff and the defendants. The said agreements of 1937 and 1939 contained the same provisions hereinabove quoted from said agreements of 1941.

4

All of the aforesaid agreements were negotiated and made on behalf of the plaintiff's said employees and others by the International, District and Local officers of the United Mine Workers of America, which is a powerful and independent Union, having a membership, as plaintiff is informed, of more than 500,000 mine workers, and a record through more than fifty years of effective and generally constructive work in their behalf, constituting one of the most notable achievement records in the annals of American Trade Unions.

5

Plaintiff is informed and believes, and upon such information and belief says, that in the spring of 1940 an inspector, acting for Colonel Philip D. Fleming, then Wage and Hour Administrator under said Act, made an extended investigation into the wage and hour practices of certain coal mining companies in Pennsylvania and out of such investigation raised a question as to whether, under the provisions of Section 7 or said Act, the travel time consumed by employees of such companies in going to and from

their usual working places was to be included in the work-week and paid for notwithstanding the long established practice to the contrary universally followed in the industry, and notwithstanding the explicit provisions of said Wage Agreements then in effect; that representatives of the United Mine Workers and of various operators, parties to the then current Wage Agreement, met and discussed among themselves and with the said Wage and Hour Administrator the questions so raised by such investigation and by the proceeding and decree in the case of *Fleming, Administrator*, etc., v. *Cornucopia Gold Mines* (unreported) in relation to the provisions of the current Appalachian [fol. 9] Wage Agreement and the practices in respect to computing and paying for working time, universally and consistently followed in the bituminous coal mining industry for more than fifty years; that pursuant to such consideration of said problems, Earl E. Houck, Esquire, Director of the Legal Department for the United Mine Workers of America, in collaboration with W. L. Robison, Charles O'Neill, L. T. Putnam, L. C. Gunter and J. D. A. Morrow, addressed under date July 9, 1940, to Colonel Philip D. Fleming, Administrator, Wage and Hour Division, Department of Labor, Washington, D. C., a letter showing in detail the practices followed in the bituminous coal mining industry in computing and paying for working time of underground employees, the reasons for such practices, the difficulties, inequities and hardships which would result from a departure from those practices carefully worked out through the years and reflecting the experience of long continued collective bargaining, the fortunate position to which mine workers had attained under their collective bargaining whereby the benefits conferred on them as to wages and hours by said Agreements far exceeded those provided by the Act, and the total absence of any occasion, in respect to objectives of the Act, for imposing upon the industry any requirements in relation to computing and paying for the working time of underground employees beyond those provided in said Agreements; that in reply under date July 18, 1940, the Honorable Philip D. Fleming, as such Administrator, *expressly* ruled that the practice of computing working time for underground employees as theretofore followed in the bituminous coal mining industry and as provided in said Agreements was not unreasonable, thereby ratifying and approving the pro-

visions of and practices under said Agreements as being in consonance with the objects and provisions of said Act. Neither the said Administrator nor his successor in office, as far as this plaintiff is informed, has at any time changed the aforesaid ruling or done any act inconsistent with his said approval of the system worked out by collective bargaining and uniformly followed in the bituminous coal mining industry of computing the workweek for underground workers and paying them upon the basis of hours worked at their usual working places, exclusive of travel time.

6

In reliance upon the aforesaid approval by the Wage and Hour Administrator, this plaintiff and its employees continued to operate on the basis provided as aforesaid in the said Wage Agreement of March 12, 1939; and upon the expiration of that agreement in the spring of 1941 this plaintiff, through its accredited representatives, and its said employees through the International, District and Local officers of United Mine Workers of America, negotiated and made the said agreement of July 5, 1941, and under the terms and provisions of the same plaintiff continued to compute the working time for all of its underground workers, as in said agreement provided, upon the basis of hours spent at the usual working places, exclusive of travel time, and on that basis made all payroll calculations and payments which have been, with full knowledge of all the aforesaid facts, accepted in full settlement and satisfaction of plaintiff's entire obligation to its said employees for their services.

7

The wages paid by plaintiff to its underground workers as provided in the aforesaid Wage Agreements, and the amounts now being paid to them, have at all times been and are greatly in excess of the minimum wages required to be paid under provisions of the Act; the maximum hours of work in the regular work-week are less than the maximum hours provided in said Act; and for all time worked in excess of the regular workweek as defined in said Wage [fol. 10] Agreement plaintiff has paid to all of its underground workers one and one-half times the regular rate provided in said Wage Agreement.

8

As far as this plaintiff is informed, none of the defendants, nor anyone for them at any time prior to March, 1943, asserted any claims under the Act, or otherwise, for payment for any of the time consumed in traveling from the mine portal to the usual working place and return to the portal. But in March 1943 representatives of Operators throughout the Appalachian area and the United Mine Workers of America assembled at New York to negotiate a new Wage Agreement, and the defendant, John L. Lewis thereupon announced the demands of the mine workers, which included a general wage increase of Two Dollars ($2.00) a day. Thereafter on March 16, 1943, the Circuit Court of Appeals, Fifth Circuit, announced its decision in the case of *Tennessee Coal, Iron & Railroad Company v. Muscoda Local No. 123*, et al., 135 F. 2d. 320, and then for the first time the defendants advanced the claim that the Act requires such travel time to be counted as hours worked.

IV

The Defendants

1

All of the hereinbefore named officers of Defendant Local No. 6167 and Local No. 7337 are employees of the plaintiff, and are respectively representative of all plaintiff's employees, at its Jewell Ridge and Jewell Valley Mines respectively. Said employees are so numerous as to make it impracticable to bring them all before the court, and said named defendants are, therefore, made parties defendant hereto individually and in their respective representative capacities as provided in Rule 23(a) of the Federal Rules of Civil Procedure, so as fairly to insure the adequate representation of all plaintiff's said employees in respect to the rights herein sought to be declared and enforced for or against them as a class.

2

Said defendants Local No. 6167, Local No. 7337, District 28, and International Union are unincorporated associations within the meaning of Section 6058 of the Code of Virginia, and as such are suable by service upon their respective presidents pursuant to Rule 17(b) of the Federal

Rules of Civil Procedure. Said Section 6058 reads as follows, to wit:

> All unincorporated associations or orders may sue and be sued under the name by which they are commonly known and called, or under which they do business, and judgments and executions against any such association or order shall bind its real and personal property in like manner as if it were incorporated. Process against such association or order may be served on any officer or trustee of such association or order.

[fol. 11]

3

The plaintiff invites the timely intervention in this action of any of its other employees or any other person represented by the International Union, United Mine Workers of America, who are not specifically or individually made defendants hereto, to intervene or join herein as parties defendant to the end that the controversy herein set forth may be fully and fairly determined by this court in this proceeding.

4

The Administrator of the Wage and Hour Division, United States Department of Labor, as such Administrator, is interested in the construction and application of the Act and plaintiff invites the timely intervention of such Administrator in this action.

V

Statement of Controversy

1

An actual controversy exists between the plaintiff, on the one hand, and the defendants herein named, on the other hand, said controversy growing out of the facts hereinabove stated and the construction of Section 7 of the Act in relation to the practices of the parties hereto, as hereinbefore stated.

2

The plaintiff asserts that:

(a) In computing the workweek of its underground employees on the basis of the time worked in the mines at the

usual working places for all classes of labor, as provided in the aforesaid Wage Agreements, paying said workers accordingly, including one and one-half times the regular rate for all hours employed over thirty-five (35) computed as aforesaid in any workweek, it has fully complied with and satisfied the pertinent requirements of the Act;

(b) No part of the travel time of its underground employees from the portal to the usual working place and return, is a part of the workweek of plaintiff's said employees within the provisions of said Act;

(c) Neither travel time nor any other time spent by plaintiff's underground employees except that at their usual working places in the mines for all classes of labor, exclusive of the lunch period, is within the agreement or any obligation in law on the part, of the plaintiff to pay for as for hours employed or a part of the employee's workweek; and that

(d) It was not the intention of the Congress in enacting its Act to change the definition of working time and practices long established in the coal mining industry with respect to the status of travel time.

[fol. 12] The defendants (2), and each of them, on their part assert that:

(a) The term "workweek" as contained in Section 7 of the Act of 1938, when properly construed, includes all time elapsing from the mine worker's entering the portal of the time at the commencement of his day's work, until his emerging from the same at the close of the day's work, excepting the period provided for lunch, or, as otherwise stated, the entire time from "portal to portal", excepting only the lunch period;

(b) Computation of the workweek and wages due therefor under the provisions of said Act entitle the workers as a matter of legal right to the full amount so determined;

(c) Notwithstanding the plaintiff's having paid all of its underground workers the full amount due them for all work done by them computed according to the provisions of the applicable Wage Agreements, still the plaintiff's underground employees are entitled to have and recover

from the plaintiff the additional amounts found to be owing as the result of including in their respective workweeks all time spent from "portal to portal", less the lunch period.

VI

Demand for Judgment

Wherefore, plaintiff prays this course to make and enter a judgment declaring the rights of the parties hereto in the premises and, more particularly, plaintiff's rights as asserted in the following specific propositions:

(a) Plaintiff, in computing the work week of its underground employees on the basis of hours of work in the mines at the usual working places, exclusive of the lunch period and travel time, as provided in the effective Wage Agreements, and in paying its underground workers for their services on that basis, has complied with and discharged the obligations imposed upon it by Section 7 of the Act.

(b) Section 7 of the Act does not require that there be included within the workweek of underground workers in plaintiff's mines time spent in travel from the portal, to their usual working places and return.

(c) The Congress, in the enactment of Section 7 of the Act, did not intend that the workweek of plaintiff's underground employees should include any portion of such travel time.

(d) There is nothing in the Act, nor in the hearings and debates that preceded its passage, to indicate any intention, and the Congress in enacting the Act did not intend to change the well known definition of working time or workweek long established by wage agreements resulting from collective bargaining in its fullest sense and practices uniformly followed throughout the coal mining industry.

[fol. 13] And plaintiff further prays that said defendants, their agents, representatives and all underground employees of the plaintiff made parties hereto as a class, be restrained and enjoined from prosecuting any suit, action or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the provisions of the Act, pending final judg-

ment in this action; and plaintiff prays for a general declaratory judgment with reference to the questions presented by this petitioner and a judgment against the defendants herein for the cost of this proceeding, and for such other, different, further, or general relief as to the court may seem just and proper in the premises.

(S.) William A. Stuart, Abingdon, Virginia; George Richardson, Jr., 506 Commercial Bank Building, Bluefield, West Virginia, Attorneys for Plaintiff.

Of Counsel: Penn, Stuart & Phillips, Abingdon, Virginia; Richardson & Kemper, Bluefield, West Virginia.

[fol. 14] *Duly sworn to by Huston St. Clair. Jurat omitted in printing.*

[File endorsement omitted.]

[File endorsement omitted]

[fol. 15] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME—August 23, 1943

This day came the defendants, by Frank W. Rogers and Leonard G. Muse, Esquires, of counsel, and represented to the Court that according to their information some of the defendants were not served with process until August 17th, that all of the defendants desired to unite in one answer, and that the collection of factual data necessary for the purposes of the answer would require some time. They therefore moved the Court to extend the time for the filing of answers by all defendants until September 15th, 1943.

Appropriate notice of the motion having been given counsel for the plaintiff, and they having made no objection thereto, and the Court being of the opinion that the motion is proper and should be granted, it is so ordered.

(S.) A. D. Barksdale, U. S. District Judge.

[File endorsement omitted]

[fol. 16] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF ALL DEFENDANTS—Filed September 8, 1943

Now come all of the defendants in the above entitled cause and make answer to the Complaint heretofore filed against them as follows:

1

Defendants admit that plaintiff is a corporation organized under the laws of Virginia, having its principal office in Tazewell County in the Western District of Virginia.

The jurisdictional allegations with reference to Local No. 6167, United Mine Workers of America, contained in the second paragraph of Paragraph 1 of the "Allegations of Jurisdiction" are not entirely accurate. Local No. 6167 is an unincorporated voluntary association and labor union located and functioning as such in the Western District of Virginia.

Defendants admit that Harlan Hampton, John A. White, Omer Ketron, James W. Belcher, C. M. Mathena, Tony Farnese, Carl Altizer, T. V. White, H. D. Hampton, and James Al Smith are officers and committeemen of Local No. 6167, United Mine Workers of America, and are citizens and residents of the Western District of Virginia.

[fol. 17] The allegations as to defendant Local No. 7327, United Mine Workers of America, contained in the fourth paragraph of Paragraph 1 of the "Allegations of Jurisdiction" are not entirely accurate. Local No. 7327 is an unincorporated voluntary association and labor union located and functioning as such in the Western District of Virginia.

Defendants admit that J. H. Sheppard, J. E. Collins, Forrest Ritchie, Josh Keen, C. F. Clark, Lyss Patrick, J. A. White, Walter Jackson, Glenn Crouse, Paul Sykes and J. S. Walker, are officers and committeemen of Local No. 7327, United Mine Workers of America, and are citizens and residents of the Western District of Virginia.

The allegations with reference to defendant District No. 28, United Mine Workers of America, contained in the sixth paragraph of Paragraph 1 of the "Allegations of

Jurisdiction" are not entirely accurate. District No. 28 is an unincorporated voluntary association and labor union located and functioning as such in the Western District of Virginia.

Defendants admit that John Saxton and W. F. Minton are officers of District No. 28, United Mine Workers of America, and are citizens and residents of the Western District of Virginia.

The allegations with reference to defendant International Union, United Mine Workers of America, contained in the eighth paragraph of Paragraph 1 of the "Allegation of Jurisdiction" are not entirely accurate. The defendant International Union, United Mine Workers of America, is an unincorporated voluntary association and labor union with subordinate branches located and functioning as such in the Western District of Virginia.

[fol. 18] The allegations with reference to the defendant John L. Lewis contained in the ninth paragraph of Paragraph 1 of the "Allegations of Jurisdiction" are not entirely accurate. Mr. John L. Lewis is President of the International Union, United Mine Workers of America. He maintains a residence in the Eastern District of Virginia, but this defendant votes in and is a citizen of the State of Illinois.

2

The averments of Paragraph 2 of the "Allegations of Jurisdiction" are admitted.

3

The defendants admit the averments of Paragraph 3 of the "Allegations of Jurisdiction."

4

The defendants admit the averments of Paragraph 1 of Division II of the Complaint, entitled "Plaintiff's Mining Operations."

5

The defendants admit the averments of Paragraph 2 of Division II of the Complaint, entitled "Plaintiff's Mining Operations."

6

The plaintiff has not stated with complete accuracy the pertinent facts of operation of its mine in Paragraph 3 of

Division II of the Complaint, entitled "Plaintiff's Mining Operations."

The plaintiff operates two mines, one known as Jewell Ridge and the other known as Jewell Valley.

A—Jewell Ridge

The great majority of the employees are required to assemble at or near this mine before 7 o'clock in the morning. The men spend several minutes getting their lamps at the Company's lamp house. A man presents his lamp check to the lamp house man and receives a lamp, which is an [fol. 19] electric battery lamp and weighs 5¾ pounds. The battery fits on the employee's belt and the cable goes up his back and over the top of his cap to the lamp.

By 7 o'clock the men are required to be aboard the company cars that haul them into the mine. These cars are ordinary mine cars used for hauling coal and are always dirty with coal dust, often wet and slick and in the winter sometimes covered with snow. No seats are provided in the car and the men must crouch in them and remain in a crouched position as the man trip travels under ground or else run the risk of having their heads injured by contact with the roof of the mine.

The Company foreman is present and in charge of loading the men into the cars which make up a man trip. He rides the trip and has full charge of the trip and men.

The man trip at this mine picks up the men near the lamp house, which is about 300 feet from the mouth of the mine. The cars are hauled into the mine by electric motors. The speed with which the man trips travel varies at different times and sometimes runs about 20 miles per hour, although Company Rule 33 directs "The man trip shall not exceed six miles per hour." The man trips haul the men to and from various parts of the mine and these men must walk variable distances.

The employees are under the control, direction or supervision of the plaintiff from the time they assemble until the time they leave the mine for their homes at the end of the shift.

On the regular shift at this mine the men are in the mine approximately 9½ hours. All of that time they are subject to inconvenience and exposed to the various hazards surrounding the mining of coal.

[fol. 20] A portion of the men are not required to board the man trips at the place where the man trips begin. These men enter at different places, through old openings, and are required to meet and board the man trip on its regular schedule. They check in with the foreman and must receive their battery lamps from him. They may walk into the mine with a carbide lamp but are forbidden to work with such a light. Approximately 50 men enter and walk to and from their regular working places. They too must check in and receive their battery lamps from the foreman.

B—Jewell Valley

At Jewell Valley there is only one place where the men are permitted to catch a man trip. All employees enter through the man portal and are required to report and do report to the lamp house, get their lamps and are required to ride a man trip. The men report to the lamp house about 7 o'clock in the morning and present their checks to the lamp house man to get their lamps. At this mine the man trip leaves at 7:20 or 7:22. Here, as at Jewell Ridge, the foreman loads the men into cars, telling them when to get into the man trip and taking full charge of it. One of his duties is to keep the men out of the tool car, usually the first car in the trip, and which he must designate as such under the rules of the company.

At neither mine do man trips always proceed without interruption. They are frequently delayed by various causes.

7

The defendants deny the averments of Paragraph 4 of Division II of the Complaint, entitled "Plaintiff's Mining Operations." Defendants aver that exactly the contrary is true. The men are required to be on hand at a specified time. They are subject to the control, direction or supervision of the plaintiff and are at work within the meaning and effect of the Fair Labor Standards Act from the time they are reuired to assemble at the beginning of the shift until time they disperse at the end of the shift, excepting [fol. 21] the prescribed lunch period. Those men who walk to and from their places of work are likewise at work within the meaning of the Fair Labor Standards Act during all the time, excepting the lunch period, they are in the mines.

8

Defendants deny the averments of Paragraph 5 of Division II of the Complaint, entitled "Plaintiff's Mining Operations" and for a more accurate statement respectfully refer the Court to the specific allegations set up hereinabove in Paragraphs 6 and 7. With a few insignificant exceptions the exit from the mines is a reverse process of the entry.

9

Answering Paragraph 6 of Division II of the Complaint, entitled "Plaintiff's Mining Operations" the defendants admit that the travel time is at least as great as the figures given in this paragraph. Defendants charge upon information and belief that the travel time is somewhat in excess of the figures given by the plaintiff.

10

Answering Paragraph 7 of Division II of the Complaint, entitled "Plaintiff's Mining Operations," defendants say that the shifts which plaintiff operated were not seven hour shifts but were as a matter of fact and as a matter of law approximately nine hour shifts in the Jewell Ridge mine and approximately 8⅓ hour shifts in the Jewell Valley mine. Incidentally, the Agreement of February 9, 1943, was between the United Mine Workers of America and this particular plaintiff.

11

Answering Paragraph 1 of Division III of the Complaint, entitled "Wage Agreements," these defendants deny that plaintiff has operated its mine under wage agreements as therein alleged "at all times" since the effective date of the Act and say that the last wage agreement between [fol. 22] plaintiff and the United Mine Workers of America expired on midnight March 31, 1943. Defendants admit that the wage agreement contained the provisions "maximum hours and working time" and "overtime" as set out in this paragraph of the Complaint, the legal effect of which, however, is to be determined by the court under the facts.

12

Subject to the materiality and admissibility thereof, defendants admit the execution of the Supplemental Memo-

randum of Agreement referred to in Paragraph 2 of Division III of the Complaint, entitled "Wage Agreements," the legal effect of which, however, is to be determined by the court under the facts.

13

Answering Paragraph 3 of Division III of Plaintiff's Complaint, entitled "Wage Agreements," the defendants subject to the materiality and admissibility thereof, admit the execution of the contracts named, the legal effect of which is to be determined by the court under the facts.

14

Answering Paragraph 4 of Division III of the Complaint, entitled "Wage Agreements" the defendants admit that the United Mine Workers of America have a membership of more than 500,000 mine workers and that through more than 50 years the officers and members of the union have labored as best they could in behalf of the mine workers for the purpose of improving their conditions of employment, their standards of living, increasing their wages and lessening the excessive hours which they are required to spend at their hazardous occupations. Although it is true that the United Mine Workers of America might properly be called a powerful union, it has never had the power to accomplish for its members all the beneficient purposes and advantages which it sought to accomplish and achieve be- [fol. 23] cause it had opposed to it vast aggregations of capital closely knit together in huge associations of coal operators and others whose uniform policy over the long period aforesaid has been to resist and oppose the defendants' demands and efforts in behalf of the men working in coal mines.

15

Subject to the materiality and admissibility thereof defendants admit the averments of Paragraph 5 of Division III of the Complaint, entitled "Wage Agreements."

16

Answering Paragraph 6 of Division III of the Complaint, entitled "Wage Agreements" defendants say that because of the provisions of the Fair Labor Standards Act of 1938 the employees of the plaintiff could not as a matter of

law accept in full settlement and satisfaction of the plaintiff's obligation to them any computation and payment which did not pay said employees for overtime worktime they spent in the employment of the plaintiff under the provisions of said Act. Furthermore, all parties hereto have clearly understood at all times since March 10, 1943 that the mine workers employed by the plaintiff were claiming travel time was worktime under the Act in the period since April 1, 1943.

17

Answering Paragraph 7 of Division III of the Complaint, entitled "Wage Agreements" defendants admit that the wages paid by plaintiff to its underground workers did not violate the minimum wage provisions of the Fair Labor Standards Act. Defendants say, however, that the maximum hours of work in the regular work week of the plaintiff's employees were and are greater than the maximum hours provided in said Act. Defendants further say that the plaintiff has not paid its employees for all time worked in excess of the regular work week as required by the pro-
[fol. 24] visions of the Fair Labor Standards Act of 1938. The employees of the plaintiff have worked for the plaintiff many overtime hours for which they were and are entitled to pay under the provisions of the Fair Labor Standards Act of 1938 and for which they have never at any time been paid.

18

Answering Paragraph 8 of Division III of the Complaint, entitled "Wage Agreements", defendants deny the averment that none of them, nor any one for them, at any time prior to March, 1943, had ever asserted any claim "for payment for any of the time consumed in traveling from the mine portal to the usual working place and return to the portal", and say that, on the contrary, defendants, by their representatives, have on different occasions and in defferent years prior to March, 1943, contended and claimed in their negotiations with their employees that travel time in the mine is work time and should be compensated.

And these defendants say that before the announcement of the decision in the case of Tennessee Coal, Iron and Railroad Company vs. Muscoda Local Union, by the United States Circuit Court of Appeals, Fifth Circuit, on March

16, 1943, and to wit, on March 4, 1943, the Scale Committee of the United Mine Workers of America formulated for submission to the anthracite joint wage conference a proposal that the maximum hour provisions of the joint agreement be modified "to conform with the basic and legal requirements of the industry, the maximum hourly provisions of the agreement shall be amended to establish portal-to-portal for starting and quitting time for all underground workers with the stipulation that present conditions and standards as affecting contract miners and their laborers shall not be changed thereby."

And these defendants say that on March 9, 1943, the International Policy Committee of the United Mine Workers of America formulated, and on March 10, 1943, submitted to the Appalachian Joint Wage Conference in New York its proposal that the maximum hours and working time provisions of the Appalachian Joint Wage Agreement be revised and modified "to conform with the basic and [fol. 25] legal requirements for the industry, the maximum hours and working time provisions be amended to establish portal-to-portal for starting and quitting time for all underground workers."

The matters alleged in the two preceding paragraphs were publicized throughout the industry.

19

Defendants admit the averments of Paragraph 1 of Division IV of the Complaint, entitled "The Defendants."

20

For the purpose of this suit only the defendants admit the allegations of Paragraph 2 of Division IV of the Complaint, entitled "The Defendants."

21

Paragraph 3 of Division IV of the Complaint, entitled "The Defendants" requires no answer from these defendants.

22

Paragraph 4 of Division IV of the Complaint, entitled "The Defendants" requires no answer from these defendants.

23

Answering the averments of Paragraph 1 of Division V of the Complaint, entitled "Statement of Controversy", these defendants say that the controversy does not grow out of the facts merely as stated in the Complaint. There is an actual controversy between the plaintiff and the defendants which arises out of the facts of the employment as hereinabove set out.

24

Answering Paragraph 2 of Division V of the Complaint, entitled "Statement of Controversy", the defendants admit that plaintiff makes the assertions contained in sub-paragraphs (a) (b) (c) and (d), the correctness of which these defendants deny.

25

Answering sub-paragraphs (a), (b) and (c) of Division V of the Complaint, entitled "Statement of Controversy", which purport to set up the contentions of the defendants, these defendants say that their contentions have not been [fol. 26] accurately stated in the Complaint. These defendants contend that "worktime" begins when the employee comes under the control, direction or supervision of the employer and continues until he is released from such control, direction or supervision, excepting only the period prescribed for lunch. The defendants further contend that the Fair Labor Standards Act requires as a matter of law, the inclusion of such time in the computation of the workweek.

The defendants further contend that notwithstanding any payment and acceptance thereof under any wage agreement of a sum less than the plaintiff was required to pay the defendants under the provisions of the Fair Labor Standards Act of 1938 and notwithstanding any interpretation of the law by any one, the defendants are as a matter of law entitled to the benefits of the Fair Labor Standards Act of 1938.

26

Answering Division VI of the Complaint, entitled "Demand for Judgment" these defendants deny that the plaintiffs are entitled to the judgment prayed. On the contrary, these defendants respectfully submit that they are entitled to a declaratory judgment in their own favor upholding

the contentions of the defendants as herein made. The defendants do ask for such judgment at the hands of this court. They further ask that this court appoint a Special Master to ascertain and report to this court the amount due each defendant employee and former employees of the plaintiff as overtime compensation under the Fair Labor Standards Act and that upon the rendition of such report this court enter a judgment for the amount so ascertained [fol. 27] together with an additional equal amount as liquidated damages, reasonable attorneys' fees and the cost of this action. These defendants do further ask that the court consider this answer as a counter claim in behalf of the defendant employees and former employees of the plaintiff, and that the plaintiff be required to answer it as such.

(s) Crampton Harris, 1618-20 First National Building, Birmingham, Alabama. Leonard G. Muse, 306-17 Boxley Building, Roanoke, Virginia. Frank W. Rogers, 306-17 Boxley Building, Roanoke, Virginia. Welly K. Hopkins, United Mine Workers Building, 900-15th St., N. W., Washington, D. C. Attorneys for Defendants.

[fol. 28] CERTIFICATE OF SERVICE

I, Leonard G. Muse, do hereby certify that I am of counsel for the defendants in Civil Action No. 73 entitled Jewell Ridge Coal Corporation, Plaintiff, v. Local No. 6167, United Mine Workers of America et al., Defendants, now pending in the United States District Court for the Western District of Virginia at Abingdon, and I do hereby certify that this 7th day of September, 1943, I have served upon William A. Stuart, Esq., Attorney at Law, Abingdon, Virginia, and George Richardson, Jr., Esq., c/o Messrs. Richardson & Kemper, 506 Commercial Bank Bldg., Bluefield, West Virginia, counsel of record for the plaintiff, a copy of the defendants' answer by mailing this 7th day of September, 1943, a copy thereof to each of them at the above addresses with postage prepaid.

(s) Leonard G. Muse.

[fol. 29] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

[File endorsement omitted]

AMENDMENT TO ANSWER AND COUNTERCLAIM OF DEFENDANTS —Filed by leave of Court November 6, 1943

Come now the defendants in further answer to the complaint and say that they will not further assert their claim for pay for travel time spent in the mines prior to midnight March 31, 1943, the expiration date specified in the contract mentioned in the complaint between the plaintiff and the United Mine Workers of America.

/S/. Crampton Harris, 1618-20 First Nat'l Bank Bldg., Birmingham, Alabama. Leonard G. Muse, 306-17 Boxley Bldg., Roanoke, Virginia. Frank W. Rogers, 306-17 Boxley Bldg., Roanoke, Virginia. Welly K. Hopkins, United Mine Workers Bldg., 900 15th St., N. W., Washington, D. C. Attorneys for Defendants.

[fol. 30] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

[File endorsement omitted]

PLAINTIFF'S ANSWER TO DEFENDANTS' COUNTERCLAIM—Filed September 27, 1943

1. The plaintiff denies that it is in any wise liable under the counter-claim advanced by the defendants in Paragraph numbered 26 of the answer heretofore filed by them herein.

/S/. Wm. A. Stuart, Abingdon, Va. George Richardson, Jr., 506 Commercial Bank Building, Bluefield, W. Va. Attorneys for Plaintiff.

I, Wm. A. Stuart, of counsel for plaintiff in the above entitled action, do hereby certify that on September 27, 1943, I served the foregoing answer to the defendants' counter-claim upon the defendants by mailing a copy of said answer to the counsel of record for defendants, namely, Crampton Harris, 1618-20 First National Building, Bir-

mingham, Alabama, Leonard G. Muse, 306-17 Boxley Building, Roanoke, Virginia, Frank W. Rogers, 306-17 Boxley Building, Roanoke, Virginia, and Welly K. Hopkins, United Mine Workers Building, 900-15th St., N.W., Washington, D. C.

Given under my hand this 27th day of September, 1943.

/S/. Wm. A. Stuart.

[fol. 31] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

ORDER ON APPLICANT FOR INTERVENTION—Filed October 30, 1943

Upon the motion of Southern Coal Producers Association, a corporation, for leave to intervene as a plaintiff in this action, filed herein on October 9, 1943, the written memorandum in support of said motion filed October 26, 1943, the objections of defendants to said motion, filed October 27, 1943, and the oral argument of counsel, both in support of, and in opposition to, said motion, heard in open court at Lynchburg on October 27, 1943, it appearing to the Court, for reasons fully stated in a memorandum of opinion this day filed, that the applicant for intervention has no absolute right of intervention under the provisions of Rule 24, Federal Rules of Civil Procedure, and the Court being further of the opinion that in the exercise of its discretion under the provisions of Rule 24, Federal Rules of Civil Procedure, as to permissive intervention, the applicant should not be permitted to intervene, doth so adjudge. It is accordingly ordered that the motion of the said Southern Coal Producers Association, for leave to intervene as plaintiff in this action, be, and the same is hereby denied; to which action of the Court in denying its said motion, the said applicant, Southern Coal Producers Association, by counsel, duly objected and excepted for reasons fully stated to the Court.

And it further appearing to the Court that the applicant, Southern Coal Producers Association, represents numerous operators of bituminous coal mines in the Southern

Appalachian area similarly situated to the plaintiff herein, [fol. 32] which operators have present or contingent controversies similar to that presented in this action, it is ordered that the applicant, Southern Coal Producers Association, if it be so advised, be, and it hereby is, granted leave to participate, by its counsel, in the trial of this action, to argue the same, and to file briefs herein, as an *amicus curiae*.

And it is further ordered that the Clerk of this Court certify and mail copies hereof, together with uncertified copies of the Court's Memorandum of Opinion this day filed, to George Richardson, Jr., Esquire, Attorney at Law, 506 Commercial Bank Building, Bluefield, West Virginia, attorney for the plaintiff, William A. Stuart, Esquire, Attorney at Law, Abingdon, Virginia, attorney for the plaintiff and for the applicant for intervention, Crampton Harris, Esquire, Attorney at Law, 1618-20 First National Bank Building, Birmingham, Alabama, Leonard G. Muse, Esquire, Attorney at Law, 306-317 Boxley Building, Roanoke, Virginia, and Welly K. Hopkins, Attorney at Law, United Mine Workers Building, 900 15th St., N.W., Washington, D. C., attorneys for the defendants, and to Edward R. Burke, Esquire, Attorney at Law, 515 Southern Building, Washington, D. C., and John C. Gall, Esquire, Attorney at Law, 701 Southern Building, Washington, D. C. attorneys for the applicant for intervention.

Enter:

A. D. Barksdale, United States District Judge.

[fol. 33] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

PRETRIAL ORDER—Entered and filed November 5, 1943

A pretrial conference having been this day held in the Judge's Chambers at Roanoke, at which counsel for both plaintiff and all defendants were present, the action taken at such conference is hereby recited as follows:

(1) Upon the motion of the defendants, by counsel, leave is granted them to file their "Amendment to Answer and Counterclaim", and the same is accordingly filed.

(2) By agreement of the parties, by counsel, it is stipulated as follows:

(a) That this action is brought in the correct name of the proper plaintiff, and includes all necessary defendants, the names of the defendants are correctly stated except that defendant, Local No. 7337, is erroneously designated in the complaint and should be designated as Local No. 7327; and, on motion of the plaintiff, it is ordered that the complaint be, and it hereby is, so amended;

(b) In paragraph 6 of Section III of the complaint, the agreement referred to as "the said Wage Agreement of March 12, 1939" is incorrectly designated, and should be designated as "the said Wage Agreement of May 12, 1939", and, on motion of the plaintiff, it is ordered that the complaint be, and it hereby is, so amended.

(3) As so amended, it is conceded by defendants that Section I of the complaint is true and correct with the exception of certain allegations not material to the issues.

[fol. 34] (4) As to Section II, defendants concede the truth and correctness of paragraphs 1 and 2.

(5) As to paragraphs 3, 4, 5, 6 and 7, of Section II, defendants make no admission. Such paragraphs constitute plaintiff's allegation of its method of operation of its mines. Defendants' contention as to the method of operation of plaintiff's mines is set out in paragraphs 6 to 10, inclusive, of their answer.

(6) As to Section III, defendants concede that paragraph 1 is true and correct except that defendants deny that there was any contract between plaintiff and defendants in effect subsequent to March 31, 1943.

(7) Defendants concede that paragraphs 2, 3 and 5, of Section III, are true and correct, but do not concede the materiality or admissibility of the facts therein alleged.

(8) Defendants concede that paragraph 6, of Section III, is true and correct except insofar as it may allege a legal conclusion, but do not concede the materiality or admissibility of the facts therein alleged.

(9) Defendants make no admission as to paragraph 7, of Section III, which states plaintiff's contention in that regard; defendants' contention upon the subject being contained in paragraph 17 of their answer.

(10) Defendants make no admission as to paragraph 8, of Section III, which states plaintiff's contention in that regard: defendants' contention upon the subject being contained in paragraph 18 of their answer.

(11) As to Section IV, defendants concede that paragraph 1 is true and correct, and paragraph 2 is admitted [fol. 35] for the purposes of this action.

(12) It is further stipulated and agreed by all parties, by counsel, that the issues to be tried in this action are as follows:

a. What constitutes the working time which makes up the work week of plaintiff's underground employees within the meaning of Section 7 of the Fair Labor Standards Act of 1938, and what amounts, if any, are due and unpaid to such employees under said Section, the determination of such amounts, if any, to be later referred to a special master:

(1) In reference to "a" above, the plaintiff contends that such work week does not include that portion of the time spent by its underground employees in being transported or walking to and from their usual working places.

(2) In reference to "a" above, the defendants contend that such work week includes all the time from the time such employees are required to report and do report for work at the portal of the mine until they return to the portal at the end of the shift, less the regular lunch period when they are relieved of all duties.

(13) It is further stipulated and agreed that:

a. Plaintiff is a corporation organized under the laws of the State of Virginia and was incorporated prior to October 24, 1938, and

b. That this is a class action binding upon and inuring to the benefit of all plaintiff's underground employees.

(14) It is further ordered that this action be, and the same is, hereby set down for trial in the Court Room of this Court, at Roanoke, at 9:30 o'clock A. M., Wednesday, November 17, 1943, by the Court without a jury.

[fol. 36] (15) And it is further ordered that the Clerk certify and mail copies hereof to George Richardson, Jr., Esq., 506 Commercial Bank Building, Bluefield, West Virginia, and William A. Stuart, Esq., Abingdon, Virginia, attorneys for the plaintiff, to Crampton Harris, Esq., 1618-20 First National Bank Building, Birmingham, Alabama, Frank W. Rogers, Esq., 306-317 Boxley Building, Roanoke, Virginia, Leonard G. Muse, Esq., 306-317 Boxley Building, Roanoke, Virginia, and Welly K. Hopkins, Esq., United Mine Workers Building, 900 15th Street, N. W., Washington, D. C., attorneys for the defendants; and to Edward R. Burke, Esq., 515 Southern Building, Washington, D. C., and John C. Gall, Esq., 701 Southern Building, Washington, D. C., attorney for Southern Coal Producers Association, *amicus curiae*.

Enter:

(S.) A. D. Barksdale, United States District Judge.

[fols. 37-39] In United States District Court

[Title omitted]

Statement of Evidence

Tried before Hon. A. D. Barksdale, District Judge, at Roanoke, Virginia, on November 17, 18, 19, 20, 22, 23 and 24, 1943.

Appearances:

For the Plaintiff:—Messrs. Richardson and Kemper, George Richardson, Jr., Esq., Bluefield, West Virginia. Messrs. Penn, Stuart and Phillips, William A. Stuart, Esq., Abingdon, Virginia.

Amici Curiae:—Edward R. Burke, Esq., Washington, D. C. John C. Gall, Esq., Washington, D. C.

For the Defendants:—Crampton Harris, Esq., Birmingham, Alabama. Mesrs. Woods, Chitwood, Coxe and Rogers, Frank W. Rogers, Esq., Leonard G. Muse, Esq., Roanoke, Virginia. T. C. Townsend, Esq., Charleston, West Virginia.

[fol. 40] COLLOQUY

Be It Remembered, that upon the trial of this case, on Wednesday, the 17th day of November, 1943, the following proceedings were had:

By Mr. Rogers: If your Honor please, I think we can perhaps save a good deal of time if we can have some understanding about objections to the materiality of evidence. As your Honor will recall, in the amended answer, we admitted, subject to materiality, a great many of the allegations of the bill of complaint. Your Honor will further recall that when we filed our amended answer, stating that we would not assert any claim for anything that occurred prior to April 1st, 1943, we also raised further questions of materiality. In view of the fact that both sides have waived a jury and are submitting to the Court all questions of both law and fact, it occurs to us that we could save a good deal of time if we could have some understanding that unless we saw fit to object to some evidence on the ground of materiality at the time it was being introduced, that we could let it all go in with the understanding that we did not thereby concede its materiality, but would be free to raise that point when it came time for the argument.

By the Court: Is there any objection to that procedure?

By Mr. Rogers: I think that applies to any testimony, that if either side wants to object to it at the time, they can, but their failure to object at the time would not be construed as a waiver of the subsequent right to question the materiality when it comes time for argument.

By the Court: It would be my general impression if you didn't object at the time, you could later move to strike it out, if you made such a motion before the close of the case.

[fol. 41] By Mr. Richardson: I should be entirely agreeable to that, with this understanding: That we should like to be apprised as to the nature of objections as we go along, as I am sure the Court would.

By the Court: I don't think the objection or motion to strike would be timely unless made before the case was closed. A witness might be excused who might be recalled by reason of an objection.

By Mr. Rogers: We didn't have in mind any objection to the competency of a witness, but merely as to the materiality, which, after all, is a question of law to be covered

in the argument. If counsel for the other side prefer, we will follow the usual procedure.

By Mr. Richardson: It occurs to me what Mr. Rogers says is very sensible and we concur in that view. I merely didn't wish to be surprised by any objections, the nature of which I had no reason to anticipate, and if that is borne in mind, I am sure we can proceed on that basis.

By the Court: I think so. Certainly, to a line of questions, it would be unnecessary to object to each one. You might indicate an objection to that general line, and when it is through, you can make a motion to strike out later.

And, Thereupon, Be It Further Remembered, that the plaintiff, to maintain the issues on its behalf, introduced the following evidence, to-wit:—

Huston St. Clair, a witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

[fol. 42] Direct-examination.

By Mr. Richardson:

Q. 1. I believe your name is Huston St. Clair?

A. That's correct.

Q. 2. Where is your residence?

A. My legal residence is in Tazewell, Virginia. My domicile is in Bluefield, West Virginia.

Q. 3. You are a medical doctor?

A. Yes.

Q. 4. What is your connection with the Jewell Ridge Coal Corporation, the plaintiff in this action?

A. I am President,—since 1939.

Q. 5. How long have you been connected with that corporation?

A. I have been actively connected as an officer since 1932.

Q. 6. Have you had some association with it longer than that?

A. Since 1913, when I was first employed.

Q. 7. I believe your father, Mr. George W. St. Clair, was, in his life time, the President of this corporation?

A. That's correct.

Q. 8. You say you are now President, Dr. St. Clair. What other positions have you held with this company?

A. I was Vice-President from 1932 to 1939. Previously, I had worked during several summer periods at various occupations.

Q. 9. When did that begin?

A. I thought it began in 1913, but I was not actually employed. I spent the summer there and I was employed there in '14, '15, '16, '19, and one year in the early twenties.

[fol. 43] Q. 10. What were you doing at the mine in those early years?

A. I worked in various jobs. I clerked in the store in 1913. I worked in the machine shop and worked on the track and worked in the sawmill and I loaded coal, and I may have had some other jobs for a short period.

Q. 11. In short, you have had some contact with the various activities around this coal mine and have become, through actual experience, familiar with its operation?

A. That's right.

Q. 12. Did you have some experience in selling the coal from this mine?

A. I spent most of my time from the middle of 1932 to June, 1933, traveling in the sales territory for the principal purpose of getting acquainted with the distribution of our coal and other coals. I was sales manager of Virginia Smokeless Coal Company from 1933 to 1934.

Q. 13. The Virginia Smokeless Coal Company had what relation to the plaintiff company?

A. That's the exclusive sales agent for the coal produced by Jewell Ridge. I have had general supervision of that sales company since 1934.

Q. 14. These activities you speak of for Virginia Smokeless Coal Company were in reference to the sale of this coal?

A. Yes.

Q. 15. You say you have been the President of this Company since 1939?

A. Since November, 1939.

[fol. 44] Q. 16. I wish you would state to the Court why this action was instituted.

A. This action was instituted because in March of this year a demand was made for a change in the method of computing work time to provide for payment for travel time from portal to portal. This involved a considerable past liability, a considerable increase in the cost of mining coal, both for the present and for the future. This claim

was based on compliance with the law, and in an effort to determine what the law requires and to know what our liability may be, we determined to ask for a declaratory judgment.

Q. 17. Is your Company, the plaintiff here, a member of any Association of coal mining operators?

A. It is a member of the National Coal Association and the Southern Coal Producers Association.

Q. 18. I wish you would tell the Court what, if any, contact you had with that Association of which your company is a member before instituting this action, and the reason for that.

A. Prior to instituting this suit, being members of the Southern Coal Producers Association, and realizing that such action would affect the other members of the Southern Coal Producers Association, I went to Washington and told the directors of the Southern Coal Producers Association that we contemplated filing a suit for declaratory judgment, and gave them our reasons for doing so, and told them that we would like to have their approval, or, at least, to hear any objections that they might have to such action being taken. We further requested that they paricipate in interest in the case, but that we, as a company, wanted to institute this suit and follow it thorugh. [fol. 45] Q. 19. And you have done so since?

A. That's correct.

Q. 20. Dr. St. Clair, some question has arisen as to the present appropriateness of this litigation. What have you to say about that? Have these questions that you mentioned been settled?

By Mr. Rogers: Objection. We can see no connection between Dr. St. Clair's idea of the appropriateness of this action and the merits involved.

Which objection was overruled by the Court, to which ruling the defendants excepted.

A. Since this suit was instituted, there has been an arrangement made between the United States Government and the United Mine Workers, which has provisions relating to travel time, but rather than settle those questions, it has at least for the present created more confusion. Even though it may settle the questions in the near future, it would be only for the period of Governmental control,

following which the operators and United Mine Workers would have to reach, by agreement, another contract, and the fact that the operators have payment for travel time included under the present arrangement does not indicate a voluntary assumption of that payment on the part of the operators. It is under duress of the conditions and was imposed upon them by Governmental action. The future importance of the payment for travel time is such that we consider it is possibly even more important than ever for this case to be determined.

Q. 21. You refer to travel time. Just what do you mean by that, Dr. St. Clair?

[fol. 46] A. Under the collective bargaining between the United Mine Workers and the Operators, through long established custom, payment has been made from face to face—that is, payment began at the time the man gets to his working place and ends at the time the man leaves his working place. Travel time includes that time necessary to be spent by the man in going from the portal or entrance to the mine to his working place and returning from his working place to the portal.

Q. 22. That is to say, the travel time is the time consumed in getting to the place where the men have been accustomed to perform their duties underground?

A. That's right, in getting to and from.

Q. 23. In the early days of your experience with this mine, as you recall it, how was the travel to the working places performed by the men who worked underground?

A. In the early days, in my first experience there, all travel was by foot,—in other words, the men walked to their working places. It was a relatively new mine and the distances were not great, and there was no provision made for transporting men.

Q. 24. At that time what sort of power was used in the mine?

A. The haulage in the mine was done by mules.

Q. 25. And you say then all of the men walked from the entrance of the mine to their working places inside?

A. They walked unless occasionally they would get in a mule-drawn car and ride in, but as a normal thing, they walked.

Q. 26. During the time that you were working about the mine,—I believe you said from 1913 through 1919, did you make a change at the mine in the power for operation?

[fol. 47] A. Yes. I believe it was in 1915 we built a little power plant and electrified the mine, not completely, but at least through the main haulage. We continued for a time to use mule haulage in the sections, and gradually it was electrified throughout.

Q. 27. That electric power was used then for hauling the cars that moved the coal out of the mines?

A. Yes.

Q. 28. Did the men continue to catch rides, as you say?

A. Yes. They gradually developed, as the distances increased, the practice of waiting to take men in, but without the organized mantrip as it is known today, and also to bringing men out, but a good many of them would walk out. Some of them would stay in longer so they could clean up their working places and walk out, and some would finish cleaning up earlier and walk out.

Q. 29. What means, if any, are provided by the Company now for taking the men into and bringing them out of the mine?

A. We have the same means as we had then, except that the mantrips are provided now, on schedule, and the majority of men ride these mantrips as a regular practice, but some of them still walk in and walk out.

Q. 30. What brought about the orderly arrangement of a system of mantrips?

A. The increasing length of the haulway, the increasing number of employees, and an attempt to achieve more orderliness in the operation of the mine.

Q. 31. Was the safety of the men a factor?

A. Yes.

[fol. 48] Q. 32. Does a *d*upervised mantrip promote safety?

A. I believe it does promote safety, because in each mine, there are several hundred men employed. It is safer to have an organized means of entrance by mantrips than it is to have a large number of men walking around through the mines.

Q. 33. I referred to this as "supervised mantrips". Are they supervised?

A. They are supervised for safety.

Q. 34. They are arranged according to schedules, are they?

A. Yes, they are. We have a regular starting time inside at the regular working places of the employees, and

these mantrips are arranged so they will arrive there to permit the men to arrive at their working places at their scheduled time.

Q. 35. Aside from promoting safety, Dr. St. Clair, how does the system of mantrips serve the men?

A. Well, it saves time for the men, saves their energy, and by saving their energy, it would promote greater productiveness for the piece-workers. Other than the safety and the saving of time and energy I don't know of any particular benefit they receive.

Q. 36. Is it of advantage to the Company also?

A. Yes, it it.

Q. 37. I wish you would state to the Court what advantages you may see in it to the Company.

A. The company receives a benefit from anything that improves safety. Furthermore, the orderliness which permits a foreman to get his men on the section at the same time, and the increased productiveness that is presumed to result from the saving of energy by the men riding rather than walking to their work is a benefit to the Company.

[fol. 49] Q. 38. Is it of some expense to the Company?

A. It is an expense by the fact that the mantrips have to run, taking the empties in and bringing empties out to return the men after their work shift, and it also interferes with haulage, and is an expense by such interference. That is, the haulage of coal.

Q. 39. Is all of the expense of operating these mantrips for moving the men from the outside to their working places inside the mine borne by the company?

A. Yes, sir.

Q. 40. Is any charge made to the men for hauling them over that system?

A. No.

Q. 41. You referred a while ago to the face to face basis of pay. I wish you would describe that a little more fully, so that the Court will understand clearly what you mean by that basis of pay.

A. By agreement between the Operators and the United Mine Workers, payment was made for work performed at the working place. That was generally spoken of as face to face, which applies more particularly to the coal loaders who actually work at the face, that is where the coal is being produced, but was extended by general understand-

ing so that it means the inside men at their working place, wherever that may be. It includes all of the duties performed by the employee. In the case of the coal loader, that includes timbering and handling of slate, and other duties, varying some in different mines because of prevailing customs, but taking care of the work that he is required to do at his usual working place. In the case of the other men, such as the company men who work on the track, it provides payment for them while they are at the place where they are required to perform their duties. [fol. 50] Q. 42. Has the face to face basis of pay or method of measuring the day's work prevailed in this industry throughout your acquaintance with the operation of this mine?

A. It has prevailed at our mines from the beginning of their operation, one in 1910 and the other in 1936, and from my association with other members of the industry, it has prevailed generally throughout the industry.

Q. 43. Has that association been broad throughout the entire eastern section of the United States where coal is mined?

A. I frequently come in contact with a fairly large number of other operators.

Q. 44. And from that, are you prepared to say that this face to face basis of pay has obtained universally throughout the bituminous coal mining industry in the Appalachian area of the United States?

A. It has, and is so provided in the contract which is applicable to all the mines in the Appalachian area with a very few exceptions, and those have the same basis, I understand, as the mines operating under the agreement with the United Mine Workers. I am speaking now of the same basis so far as face to face is concerned.

Q. 45. You refer to the contract. By that, do you mean the contract between your company and the United Mine Workers?

A. I referred to the General Appalachian Agreement. We have an agreement in our Company which includes the basic Appalachian Agreement, and District Agreement and Local Agreement.

Q. 46. And it was to that contract that you referred?

A. Yes.

Q. 47. You do have a contract with the Mine Workers at the mines operated by the plaintiff company, do you not?

[fol. 51] A. The Company has a contract at Jewell Ridge and at Jewell Valley, the two mines operated by the Company.

Q. 48. And that's with the United Miné Workers of America?

A. That's correct.

Q. 49. When was the Union first formed at these mines?

A. Our first agreement followed closely after the organization of the employees into a Union at Jewell Ridge in 1933. The Jewell Valley mine was opened in 1936, and operated under a formal agreement in 1937.

Q. 50. Before 1933, you had no Union at these mines?

A. We did not have.

Q. 51. And did you have individual contracts with your workers?

A. We had no formal contracts. We had the customary employer-employee relationship of employment.

Q. 52. When you were working on the basis of the individual arrangement with the mine workers, did this face to face basis of measuring the day's work prevail?

A. Yes, it did.

Q. 53. And that had continued, I believe you say, from the time this mine first opened?

A. That's correct.

Q. 54. Now, when the Union was formed in 1933, was there any departure from that basic arrangement?

A. In so far as the custom of measuring the work time from face to face, there was no departure.

Q. 55. Dr. St. Clair, in the summer of 1933, when you say the Union was formed at your mine, there was a proceeding, was there not, under the National Industrial Recovery Act, for the preparation of a general Code of Fair Competition for the Bituminous Coal Mining Industry?

[fol. 52] A. Yes, there was.

Q. 56. Did there come out of that proceeding a Code to govern the Bituminous Coal Mining Industry?

A. Yes, sir.

By Mr. Richardson: If Your Honor please, we tender and ask leave to file as "Plaintiff's Exhibit No. 1" a document entitled: "Code of Fair Competition for the Bituminous Coal Industry", which has been inspected and accepted as correct in text by counsel for the defendants.

By Senator Muse: In order to keep Mr. Richardson from being surprised, we are going to object to that document, as to its materiality. We do object now. As to its authenticity, we raised no question.

By the Court: I shall treat your objection as a motion to strike out and take it under advisement.

By Mr. Richardson: May I inquire the reasons for the basis of that objection?

By the Court: He objected on the ground of materiality. Do you wish to amplify that?

By Col. Harris: I will be glad to, Your Honor, if you care to hear it.

By the Court: If you wish to amplify the basis of your objection, we will be glad to hear that.

By Col. Harris: I am afraid anything further would be a matter of argument. I might indicate the position we will take. It is our position, if the Court pleases, that the question in this case is a very simple question of fact, whether travel time is work time, what enters into the work week under Section 7 of the Fair Labor Standards Act. If it is work, then any contracts or agreements, or anything else, custom, tradition, practices, all go out the window if they are violative of the Act of Congress. We have here and will be prepared, on argument, to give Your Honor decisions, saying that contracts, whether made before or after the passage of the Fair Labor Standards Act, if violative of the Act, have no binding effect. The parties cannot remove their transactions from the dominant constitutional authority by making contracts about them, so we say that this, a code made under the NIRA, in 1933 or 1934, which is three or four years before the Fair Labor Standards Act was passed, which went into effect on October 4, 1938, can throw no light on the question [fol. 53] before this Court, so that all documents which they have, in so far as they attempt to or are offered for the purpose of nullifying the Act of Congress, are legally inadmissible and immaterial. Furthermore, without in any sense departing from that, our amendment waives any claims so far as the defendants are concerned, for any back pay prior to the expiration date specified in the contract,—that expiration date being midnight of March 31st, 1943, and there has been no contract since then, and that any old contracts which do not involve any question now before the Court are wholly immaterial and that the pres-

ent situation since April 1st, 1943, is a situation where there is no contract, no waiver, but under the undisputed evidence, a demand for portal to portal pay made in March, 1943, so that we have the simple situation from April to the present time, governed by the Fair Labor Standards Act, on a question of fact.

By Mr. Richardson: The Colonel's statement is very helpful, and I am obliged to him and to the Court for permitting me to ask it. The basis of our offering these documents is that we disagree with him on the fundamental issue in that we do not conceive that this matter is limited to the factual base which he states, but that it includes also the intent of the Congress in this enactment, and that these documents will assist the Court in determining that part of the issue.

By the Court: Well, I am going to take the question, which I am inclined to think will be a recurring question of the admissibility of not only this document but others of a similar character, under advisement and pass upon them later. I don't suppose it will be seriously controverted that the proposition of a contract between the parties cannot abrogate the provisions of the Wage and Hour Act. However, I am inclined at this point to think that documents and other evidence showing the historical relationship existing between the employers and employees in this industry are material and should be considered by the Court, and I will reserve final determination.

By Mr. Richardson: To clarify our position, if the Court please, Colonel Harris made two points as the basis of the objections, one, that the issue before the Court is a simple issue of fact. The other, he made the statement, or the contention, that no contract has existed since April 1, 1943, or March 31st, 1943. It is our position on that latter question that there has in contemplation of law existed a continuing contract at all times since March 31st, 1943, that the construction of the predecessor contract of which it was an extension, and therefore, anything which throws [fol. 54] light on the construction of the contract which ran up to March 31, 1943, is relevant on the question of the construction of the contract which we contend has been in existence in contemplation of law since then.

By the Court: Your relative contentions about that were made pretty clear at the pre-trial conference.

By Senator Muse: We would like our objections to go to all such documents.

By the Court: It probably would be better, as each document is tendered, to make an objection for the reasons previously stated.

The document referred to was thereupon filed, marked as indicated, and is returned as a part of this transcript.

By Mr. Richardson:

Q. 57. Following the promulgation of the general Code of Fair Competition for the Bituminous Coal Mining Industry in September, 1933, under the National Industrial Recovery Act, was there, in the spring following, an amendment adopted to that Code, changing the basic hours of work?

A. In the spring of 1934?

Q. 58. Yes.

A. Yes, sir.

Q. 59. What change was effected?

A. There was a reduction of hours of work from eight hours to seven hours per day.

Q. 60. Was the basic day still determined by the hours of work at the face?

A. At the usual working place, I believe it was stated.

Q. 61. That "at the usual working place" is the formula written into these contracts to denote the face to face method, as you have called it?

[fol. 55] A. That is right.

By Mr. Richardson: We now submit and ask leave to file, if Your Honor please, as "Plaintiff's Exhibit No. 2", a copy of Amendment No. 1 to the National Recovery Administration Code of Fair Competition for the Bituminous Coal Mining Industry, as approved on March 31st, 1934. This document has also been verified as to authenticity.

By the Court: The defendants object for the reasons already stated, and the Court treats the objection as a motion to strike out and takes it under advisement.

The document referred to was thereupon filed, marked as indicated, and is returned as a part of this transcript.

By Mr. Richardson: Along with the two documents that have been introduced, we tender and ask leave to file as

"Plaintiff's Exhibit No. 3", a pamphlet showing a Code of Fair Competition for the Bituminous Coal Industry as approved on September 18, 1933, by President Roosevelt, which includes Amendments 1 to 3, inclusive, of the Code of Fair Competition for the Bituminous Coal Mining Industry.

By the Court: I will take it that all documents which you tender have been approved by the defendants as to authenticity, unless you state otherwise.

By Mr. Richardson: That is a fact.

By the Court: Let the document be received, with the same objection and under the same conditions as stated by the Court.

The document referred to was thereupon filed, marked as indicated, and is returned as a part of this transcript.

By Mr. Richardson:

Q. 62. Doctor St. Clair, just what is meant by the term "Appalachian Agreement in the matter of the Union contract?

A. That's an agreement arrived at between the United Mine Workers, International Union, and various District Unions within the Appalachian Area, and the operators, either through their Associations or individual companies within the same area.

Q. 63. Is your company, the plaintiff here, within that area?

A. Yes, it is.

[fol. 56] Q. 64. Was your Company represented in and included as to the Appalachian Agreement which was made with the United Mine Workers of America in September, 1933?

A. It was represented by agreement with the United Mine Workers.

By Mr. Rogers: We don't want to raise any technical objection but it may be of some importance. I will ask Mr. Richardson if he will develop in his examination the fact that that agreement doesn't become binding on any local company or on your company until it is signed by your company and by the District Union.

Q. 65. You have heard Mr. Rogers' statement, Dr. St. Clair. Is that accurate as to the means of making this contract obligatory upon your Company?

A. In 1933, we were not represented in the District Conference following the Appalachian Wage Agreement, but by local agreement, signed by the District and by our Company, there was made applicable to our Company the provisions of the Appalachian Agreement.

Q. 66. What do you mean by the District?

A. It is District No. 17 of the United Mine Workers of America, with headquarters in Charleston.

Q. 67. I see some reference to the Smokeless and Appalachian Coal Association. What is that, if you please?

A. District No. 17 of the United Mine Workers comprises the Smokeless Coal Fields, and the operators of the Smokeless Coal Fields, in a District conference, made a further agreement, following the Appalachian Agreement, that is particularly applicable to that District but not in conflict with the Appalachian Agreement.

Q. 68. Was your Company within the Smokeless region and governed by the contract you have referred to as the Smokeless Agreement?

A. That's correct, yes.

[fol. 57] By Mr. Richardson: If the Court please, we now tender and ask leave to file a printed pamphlet which has been verified as to its authenticity, containing a Code of Fair Competition, National Industrial Recovery Administration,—Appalachian Agreement,—Pocahontas-Tug River Agreement, effective October 2, 1933 to April 1, 1934.

By the Court: Let the document be admitted under the same conditions already stated by the Court.

The pamphlet referred to was thereupon filed, marked as indicated, and is returned as a part of this transcript.

Q. 69. Was there an agreement, Dr. St. Clair, between the plaintiff Company and an accredited representative of the United Mine Workers of America about bringing the employe relations of your company within the coverage of the Pocahontas-Tug River contract, a copy of which has just been filed in evidence?

A. There was.

Q. 70. I hand you an original letter or a duplicate original, signed by Van A. Bittner, under date of September 30, 1933, and ask you if that is the agreement by which you were brought within this contract.

A. It is, yes, sir.

By Mr. Richardson: We wish, if Your Honor please, to file this contract.

By the Court: Let it be admitted under the same conditions as the previous documents.

By Mr. Richardson: This is the original document. We should like to file a typewritten copy in lieu of the signed document.

By the Court: I take it there will be no objection to that. Let the copy be substituted and the original withdrawn.

The copy referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 5", and is returned as a part of this transcript.

[fol. 58] Q. 71. The agreement which you have identified and which has been filed as Exhibit No. 4 was a contract effective October 2, 1933, and expiring April 1, 1934, I believe. Was there a new agreement made at the expiration of that contract?

A. Yes, there was.

Q. 72. I hand you here an agreement by and between the Smokeless Coal Board for the Pocahontas-Tug River District, and the United Mine Workers of America, District 17, effective from April 1, 1934, to March 31st, 1935, and ask you if that was the renewal contract which was made and under which you operated these mines for the effective period?

A. This is the renewal contract and the agreement under which we operated. We do have in addition a supplemental agreement, local agreement, which is not in conflict, but has some slight changes in rates, but this is the basic agreement under which we operated.

By Mr. Richardson: With that identification, we tender and ask to file this contract.

By the Court: Let it be admitted under the conditions heretofore stated.

The document referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 6" and is returned as a part of this transcript.

Q. 73. Is there anything in the local agreement to which you refer which bears in any way upon the hours of work or basic day or work week?

A. No.

By Mr. Rogers: I think it would be better, to keep the record straight, to let him file a copy of that subsidiary agreement.

By the Court: Have you got one?

By Mr. Richardson: I wasn't sure whether I had it or not. That's the reason I asked that question, but I will see. [fol 59] ——I don't have it.

By the Court: I will permit the question.

By Mr. Richardson: If we find that agreement we shall be glad to tender it and furnish them with a copy.

Q. 74. As a matter of fact, the local agreement referred only to rates for specified kinds of work?

A. That's correct.

Q. 75. Do you know whether the agreement which you have just identified as the agreement of April 1, 1934, was extended as to its effectiveness beyond the first day of April, 1935?

A. It was to extend to March 31, 1935, but by subsequent agreements between the operators and the United Mine Workers, it was extended to October 1, 1935.

Q. 76. And you continued to operate with your men under that contract until approximately the first of October, 1935?

A. Yes, sir.

Q. 77. At that time, was there a new contract made?

A. There was one made in September to become effective, I believe, October 1, 1935.

Q. 78. I hand you the Smokeless Wage Agreement for the Pocahontas-Tug River District—Appalachian Agreement—Effective April 1, 1935, to April 1, 1937, and ask you if that was the succeeding contract which was made and under which your mine was operated for that period?

A. It is; yes, sir.

By Mr. Richardson: We tender this and ask leave to file it, if the Court please.

By the Court: Let it be received under the same conditions as the previous ones.

[fol. 60] The document referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 7", and is returned as a part of this transcript.

Q. 79. Was there a new contract made upon the expiration of that contract in March, 1937?

A. Yes, there was.

Q. 80. I hand you here the Smokeless Wage Agreement for the Pocahontas-Tug River District—Appalachian Agreement—Effective April 1, 1937, until April 1, 1939, and ask you if this is the succeeding contract?

A. That's correct.

By Mr. Richardson: We wish to file this contract also.

By the Court: Let it be received in evidence under the same conditions as the previous documents.

The document referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 8", and is returned as a part of this transcript.

Q. 81. Was there a renewal contract or another contract made between the same parties at the expiration of the contract you have just identified?

A. There was one made in 1941—1939 to 1941.

Q. 82. I hand you the 'Appalachian and Pocahontas-Tug River Agreements by and between Pocahontas Operators Association and the United Mine Workers of America District 17, and the International Union,—Effective May 12, 1939, until March 31, 1941," and ask you if that is the next succeeding contract which was made between these parties and under which you operated?

A. This is. In 1937, we made our first contract at the [fol. 61] Jewell Valley Mine, which was the same contract as the one previously filed, and the same as this, with certain slight local exceptions where rates are concerned.

Q. 83. I believe you say the Jewell Valley Mine was first opened in 1936?

A. Construction was begun in 1936, but the first formal agreement we had was in 1937.

Q. 84. And this agreement you have identified, "Plaintiff's Exhibit 8' was the first contract made with the Union covering employer-employe relations at that mine?

A. That's right.

Q. 85. The contract you now have in your hand, effective from May 12, 1939, was applicable to both mines of this company?

A. That's right.

By Mr. Richardson: We ask leave to file this document.

By the Court: Let it be received under the same conditions.

The document referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 9", and is returned as a part of this transcript.

Q. 86. Was there a contract made between these parties in 1941 to succeed the contract which you have just identified?

A. Yes, there was.

Q. 87. Here is a copy of "Southern and Pocahontas-Tug River Agreements by and between Pocahontas Operators Association and the United Mine Workers of America District 17, and the International Union—Effective April 1, 1941, until March 31, 1943", as written, and I will ask you if that is the contract under which your company operated its two mines beginning April 1, 1941?

[fol. 62] A. Yes, sir, it is.

By Mr. Richardson: We ask to file this document also.

By the Court: Let it be received under the same conditions.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 10", and is returned as a part of this transcript.

Q. 88. Dr. St. Clair, there were, you say, certain local agreements between your company and the District or Local of the United Mine Workers of America, in respect to the working at this mine, or these mines?

A. Yes, sir, there were.

Q. 89. Was there anything in any of the local agreements at any time affecting in any way the basic agreement contained in these documents now exhibited in evidence, as to the hours of work or the basis of computation of the work day or work week?

By Mr. Rogers: Objection. We have not objected on this specific ground as these various documents were introduced, because we thought Mr. Richardson was going to follow it up with specific evidence. If we are correct in our understanding, this agreement here, the Southern Agreement, is between all the operators in a certain area and the National organization of the Mine Workers. Now, if my information is correct, that is the general basic contract and

Dr. St. Clair testified that that was the contract under which they worked and he has not yet testified, and the point, we think, may be pertinent, as to whether his company and the representatives of the mine workers ever made that contract applicable to his mine and to the employes of that mine. In other words, if I make it clear, as we understand the situation, this general or basic contract is negotiated between representatives of the operators on the one hand and representatives of the men on the other hand. Then it just covers the broad, general principles. In each District, a separate agreement is negotiated, covering points that are not included in the broad, general contract, and as the result of the negotiation of those separate contracts, then the agreement is adopted, and I thought in most cases it was attached to this, whereby the Local District and the Local Coal Operators Association or the Local Company have got to for- [fol. 63] mally adopt the provisions of this blanket or general contract. Do I make myself clear on that? We didn't object to the introduction of the contract because we felt it was one of those historical documents the Court would want, anyway, and Dr. St. Clair testified they were working under it. There has been no evidence whatever that these were made applicable to his mine by the District Agreement, and we assumed Mr. Richardson would next offer those. Instead of doing that, he has asked a general quesfion as to whether these agreements which made this effective so far as the plaintiff and the defendants here are concerned contained any terms which were different. We think under the proper evidence, those local agreements, which made this applicable to the plaintiff and the defendants in this suit should be offered in evidence.

By the Court: I am inclined to agree with counsel, that if the local agreements are in existence, they should be offered.

By Mr. Richardson: We will give you all we have, Judge.

By the Court: While you check the file on that, the Court will take a recess until 11:00 o'clock.

Court thereupon recessed at 10:45 a. m., until 11:00 a. m., at which time the trial was resumed.

Q. 90. Dr. St. Clair, you have heard what Mr. Rogers said in respect to the District or Local agreements. Please state, for the Court's information, whether the District agreements are included in these printed copies of the agreements which have been identified and filed in evidence?

A. The Appalachian Conference directs the operators and miners of each District to work out their local district problems, and the District Agreement is a part of the Appalachian Agreement. Is that the question?

Q. 91. Your mine is operating under the Pocahontas-Tug River District 17 Agreement, is it not?

A. That's correct, yes.

[fol. 64] Q. 92. Is that District 17 agreement printed in these pamphlets which you have filed in evidence?

A. It is, yes.

Q. 93. So that there is, in each of these pamphlets, the basic or general agreement and the District Agreement applicable particularly to the area in which you operate, and specifically to your company?

A. Yes, each of them until 1941 contained the Appalachian Agreement and the District Agreement, called the Smokeless Wage Agreement. In 1941, it was the Southern Agreement and the District Agreement, printed in each of these, and our local agreements adopted the Appalachian and Smokeless Agreements.

By Mr. Rogers: That was what I wanted. The witness said "Our local agreements adopted the Appalachian and Smokeless Agreements". The basis of my objection was to require the production of these local agreements which adopted the Appalachian and Smokeless Agreements.

By the Court: If the general agreements were adopted by local agreements, which were embodied in instruments in writing, if such local agreements are in existence, I think they should be introduced.

By Mr. Stuart: There was not any necessity for a local agreement to adopt this basic and district agreement.

By Mr. Richardson: We will give your Honor what we have and that will give the whole story, I think. The agreement that has been introduced here between Mr. Van Bittner and Mr. George W. St. Clair, which they made in 1933, was one of the local agreements to which you refer, Mr. Rogers.

By Mr. Rogers: That does not adopt any basic agreement. I shall read it, inasmuch as the Court didn't see it. It says:

"It is understood that your mines are in the Pocahontas Tug River coal field and the loading rates are 35.7¢ per ton. It is agreed between us that the Jewell Ridge Coal Corporation will increase the rates now be-

ing paid by it for dead work 20%. The rates for dead work in the Pocahontas-Tug River field shall not apply to your mines.

[fol. 65] "It is further agreed that the cutting rate with the shortwall machine shall be increased to 6½¢ per ton and that the cutting rate with the arcwall machine shall be 70% of 6½¢ if done by piece work.

"It is distinctly understood this agreement set no precedent for the establishment of future wage rates for dead work.

"This agreement is made in the spirit of fairness with the knowledge that collective bargaining must always be on a basis of constructive co-operation between the company and the United Mine Workers of America."

I don't see where this adopts a previous agreement, or has any connection whatever with a basic agreement, and therefore, as between the parties here, I don't think these past agreements introduced prior to this Exhibit No. 5 have any bearing on this case.

By the Court: The witness testified that the mines operated under agreements embodied in certain printed documents. If they were adopted by local written agreements, let those local written agreements be introduced. If they weren't, let him go ahead and testify that they were adopted.

By Mr. Richardson:

Q. 94. Was there any written agreement between your company and anybody, expressly adopting in so many words these agreements which have been filed in evidence?

A. There were, but may I go back to the beginning to briefly explain this?

By the Court: Yes, sir, go ahead.

A. In 1933, all of the mines of the Smokeless Field became unionized and entered into a contract with the United Mine Workers of America. That was in this District 17, known as the Pocahontas-Tug River Field, and the other fields were the New River, Winding Gulf, and Greenbrier. A question had arisen whether our mine belonged in District 17 or District 28. This letter was written to clear up that situation, stating that our mine was located in the

Pocahontas-Tug River Coal Field, with the understanding [fol. 66] that by doing so, that we worked under the Pocahontas-Tug River Agreement, or the Smokeless Wage Agreement. That was not set forth in this letter. At the time it was clearly understood,—

Q. 95. By "this letter," you mean Exhibit No. 5?

A. Exhibit 5. That was clearly set forth in agreements, which were merely a ratification of the Appalachian or Smokeless agreements that were later made, with our local agreement on certain rates that applied only to our mine.

Q. 96. This letter, Exhibit No. 5, is signed "Van A. Bittner." Who was he, if you please, and what position did he hold at that time?

A. He was President of District 17, United Mine Workers of America.

Q. 97. And District 17 included the Pocahontas and Tug River fields?

A. Yes, it did.

Q. 98. Here is a letter, Dr. St. Clair, addressed by Jesse Aquino, under date of April 22nd, 1937, to you, as Vice-President of Jewell Ridge Coal Corporation, and attached to that a letter to Mr. Aquino, dated April 15, 1937, and signed by Jewell Ridge Coal Corporation, by yourself, the paper being also signed in the name of Van A. Bittner, President, W. M. Blizzard, Vice-President, Jesse Aquino and William Lester, and I will ask you if that is an agreement, or if that correspondence makes an agreement in respect to the contracts in evidence?

A. Yes, this does.

By Mr. Richardson: We offer this correspondence in evidence. Is there any objection?

By Mr. Rogers: No, sir, none other than our general objection to all of this.

By the Court: Let the documents be received under the same conditions as the previous documents.

[fol. 67] The papers referred to were thereupon filed, bound together, marked as "Plaintiff's Exhibit No. 11", and returned as a part of this transcript.

Q. 99. Dr. St. Clair, here is an agreement between Jewell Ridge Coal Corporation, by yourself, as vice-president, and United Mine Workers of America, signed by Van A. Bittner and William Blizzard and others, and I will ask you if that is a copy of an agreement that was made be-

tween your company and the Union, in respect to these general and district agreements that have been introduced in evidence?

By Mr. Rogers: What date is that?

By Mr. Richardson: I didn't give the date because it is not clear.

A. It is effective September 16, 1937, until March 31, 1939. It is an agreement between the United Mine Workers of America and the Jewell Ridge Coal Corporation to apply at the Jewell Valley mine. May I read the paragraph to which you refer?—"The Agreement known as the Pocahontas-Tug River Agreements and entitled Appalachian and Pocahontas-Tug River Agreements by and between Pocahontas Operators Association and the United Mine Workers of America, District 17, and the International Union, effective April 1, 1937, until March 31, 1939, inclusive, apply at the Jewell Valley Mine, with the following exceptions only:", those exceptions being differences in rates for application at that mine.

The agreement referred to was thereupon offered in evidence by counsel for the plaintiff, and was admitted by the Court under the same circumstances and upon the same conditions as other documents previously offered, and the same was thereupon filed, marked as: "Plaintiff's Exhibit No. 12", and is returned as a part of this transcript.

[fol. 68] Q. 100. The agreement you have just identified and filed in evidence related to the Jewell Valley Mine. Was there a comparable agreement executed by the representatives of the United Mine Workers and your company in like effect in respect to the Jewell Ridge Mine?

A. There was, the only difference being that there are a few slight differences in rates between the two mines.

By Mr. Richardson: If Your Honor please, I am sorry I don't have that agreement. Dr. St. Clair thinks there was such but it isn't among my papers. I should like to have the privilege of supplying that if we can locate it.

By the Court: That will be all right. I will admit the evidence in regard to it with the understanding that if you can find an actual copy of the agreement, that will be introduced also.

By the Witness: May I make a statement about that?
By Mr. Richardson: Yes.

A. The working conditions embodied in the Appalachian Agreements and the Pocahontas-Tug River Agreements have always been followed because they have been understood to apply. We have settled grievances under the terms of the machinery set up in the contract. I don't believe there can be any dispute about those two contracts applying at our mines.

Q. 101. Here is an agreement, Dr. St. Clair, dated September 12, 1941, between Jewell Ridge Coal Corporation and United Mine Workers of America, relating to the Wage Agreement of April 1, 1941, as applicable to the Jewell Ridge Mine. Will you please look at that and state whether that is an original agreement that was executed between these parties, operating to make the general and District Agreement of April 1, 1941, applicable to the Jewell Ridge Mine?

A. This is the agreement that does so, yes.

By Mr. Richardson: We should like to offer this paper in evidence. I can furnish you copies of that, gentlemen.
[fol. 69] By the Court: Let the document be introduced upon the same conditions.

By Mr. Richardson: May we, if Your Honor please, supply a carbon copy in lieu of this document?

By the Court: Yes, sir, a copy may be filed and the original withdrawn.

The copy referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 13", and is returned as a part of this transcript.

Q. 102. Here is a comparable agreement, dated September 12, 1941, and operating to like effect in respect to the Jewell Valley Mine. Is that an original agreement made between these parties and to that effect?

A. Yes, this is.

By the Court: This document may be received in evidence upon the same conditions and upon substitution of a copy, the original may be withdrawn.

The copy referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 14", and is returned as a part of this transcript.

Q. 103. Doctor, were the District Agreements which are included in these printed contract forms introduced in evidence made by groups in which a representative authorized to speak for your company was one?

A. Yes.

Q. 104. And those District Agreements were thereby made applicable to and effective as to your company?

By Mr. Rogers: Objection, because it is contrary to the written agreements just filed. The written agreements just filed, which Your Honor did not read, are the Agreements between these parties—if Your Honor will look at Exhibit 14.

By the Court: The document shown me seems to make effective the agreement therein referred to between the plaintiff mine and the Union.

[fol. 70] By Mr. Stuart: With certain exceptions. The District Agreement is self-explanatory as to all parties in the District unless there is a local agreement.

By the Court: I think the objection goes more to the credibility, so to speak, than to the admissibility. I am going to overrule the objection and admit the testimony.

By Mr. Rogers: Do you have to save the point in the Federal Court?

By the Court: All you have to do is to indicate your disapproval of the Court's ruling, which you have already done.

Question No. 104, as reported, was thereupon read.

By Mr. Rogers: I don't think I made my objection entirely clear. I would like to state that our objection is based on the ground that the agreements, national, district and local, speak for themselves and require no interpretation.

By the Court: Overruled.

Question No. 104, as reported, was thereupon read.

A. The answer is yes. I don't know whether you want me to explain who our representative was.

By Mr. Richardson: That is not material, I think. If anyone is interested in knowing that, we can go into detail.

By the Court: That may be developed on cross-examination. It is not necessary to go into that now.

Q. 105. Referring to the Smokeless Wage Agreement, Exhibit No. 8, the agreement that was effective April 1, 1937 until March 31, 1939, I call your attention to this provision on Page 4: Prices and provisions of this contract shall apply to all mines in the Smokeless Producing District and in what is known now as District No. 17, operated by companies parties to this agreement. Were you, under the agreement of September 30, 1933, within that District 17 for the purpose of making these agreements?

A. Yes, we were.

[fol. 71] Q. 106. And was the agreement of 1937-1939 thereby made applicable to the mines of your company?

A. It was, but under the custom, each local company signed the agreement and it became applicable upon the signature of each local company.

Q. 107. Did each local company sign each of these general and district agreements?

A. I don't know whether they did or not. We were told by the representatives of the United Mine Workers that they did.

Q. 108. Did your company sign such an agreement?

A. Signed it as a part of that supplemental agreement.

By Mr. Richardson: If Your Honor please, that's all of the local agreements, as far as I know, that we have, and if we find any further, we should like the privilege of handing them to you to supplement this record, in response to Mr. Rogers' objection.

By the Court: All right. You will be so permitted. Go ahead.

Q. 109. Are your mines still in District 17 for the purposes of your wage contracts?

A. In so far as the provisions of the Smokeless Wage Agreement are concerned, they are.

Q. 110. I hand you a letter, Dr. St. Clair, dated January 26, 1942, written by Mr. George J. Titler, Secretary-Treasurer of District 17, United Mine Workers of America, and ask you if that is an original letter that you received from that representative of the Union?

A. This is, yes.

By Mr. Richardson: We should like to offer this letter in evidence.

By the Court: Subject to the same general objection, let the document be admitted.

[fol. 72] The letter referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 15", and is returned as a part of this transcript. Mr. Richardson thereupon read the letter.

Q. 111. Doctor, is Local Union 6167 referred to in this letter one of the Locals at your mines.

A. That is the number of the Local at the Jewell Ridge Mine.

Stipulation

It is also stipulated by counsel that Local Union No. 7327, at and before the institution of this suit, was under the jurisdiction of District No. 28.

By the Court: That Local is at the Jewell Valley Mine?

By the Witness: Yes, sir.

Q. 112. I believe you have stated that these mines, the Jewell Ridge Mine and the Jewell Valley Mine, were operated under these wage contracts which have been introduced in evidence?

A. Yes, that's correct.

Q. 113. Were payments made to the mine workers for the work they performed at these mines pursuant to those agreements?

A. Yes.

By Mr. Rogers: We want to make the same general objection as to the materiality as to payment of these wages made pursuant to these contracts.

By the Court: Why not let your objection refer to all testimony in regard to all the contracts?

By Mr. Rogers: Thank you. We adopt that suggestion.

By the Court: Overruled. Go ahead.

Q. 114. Was payment made on the basis provided in the applicable contract?

[fol. 73] By Mr. Rogers: It will be considered that our same objection applies to all this line of questions?

By the Court: Definitely.

A. Yes.

Q. 115. How frequently did you pay?

A. Twice a month.

Q. 116. Just what method or means of payment was used?

A. We paid in cash the amount due the employe, which amount was the total earnings less deductions that had accumulated against his account.

Q. 117. Was a statement furnished the employe along with his pay?

A. The money was put into a pay envelope and the face of the pay envelope is a statement which shows the employe's account for the period for which he is paid.

Q. 118. And that system has been used throughout the period that you have covered in your testimony here from 1933 to now?

A. Yes, sir.

Q. 119. Do the statements to which you have referred show the number of hours for which the men are paid?

A. It shows the number of hours for those men that are paid by the hour.

Q. 120. Thereby making it clear for just what time the men are receiving payment at their successive paydays?

A. Yes, sir.

Q. 121. Have you at any time within that period paid any of the mine workers for the time consumed in traveling from the portal entrance to their usual working places and return?

A. No, sir.

[fol. 74] Q. 122. Has any of that travel time ever appeared in the statements of work time for which the men were paid?

A. No.

Q. 123. On the contrary, did the statements and payment of wages to the men from time to time show the working time as between the time employed at the usual working places within the mine?

A. The statements merely have the number of hours worked. It doesn't show where it is worked. It has the number of hours worked on the face of the statement.

Q. 124. I am asking if the number of hours was computed on the face to face basis or whether that included at any time any of the travel time.

A. It was always computed on the face to face basis.

Q. 125. Were these payments received and accepted by your employes from time to time?

A. They were.

Q. 126. Did you ever at any time have any protest or demand from any one of your employes for pay for the time consumed in traveling from the portal to the usual working place and return?

A. We have never had protests for that purpose, no.

Q. 127. Did you ever hear any question of that kind raised by any one of the employes at either one of these mines during the life of either one of the contracts which you have filed in evidence?

A. I did not, no.

Q. 128. When is the first time you ever heard of any question being raised as to pay for that travel time?

A. It was—the first time I ever heard of any demand being made for it was in March of this year.

Q. 129. And, for what it may be worth, I wish you would please tell the Court just what you heard at that time.

[fol. 75] A. When the Wage Conferences were in progress, beginning in March of this year, one of the demands of the United Mine Workers was for payment of portal to portal pay or for travel time. They made a demand—the first demand was for $2.00 a day increase in wages, basic wage. It was stated during that conference that to meet the requirements of the law, travel time should be paid for. That's the first time that I have any knowledge of any demand being made for payment for travel time.

Q. 130. And was it pursuant to that demand and its repercussions that you came to the conclusion to institute this action?

A. It was.

Q. 131. As a practical matter, I wish you would state some of the difficulties that would be encountered in shifting from a face to face basis of determining the work-day and putting the inside mine workers' pay on the basis which would contemplate payment for this travel time?

By Col. Harris: I object to the question as being wholly immaterial.

By the Court: Overruled. Exception noted.

A. Well, there are difficulties that are inherent to mining because of the constant change of the length of the travel time within districts and within mines, and even within the time of any one employe within the mine. Working places inside the mine are not fixed places of work, but they changed from day to day. When a coal miner works in a room,

he advances that room every day that he works, the distance continually increases slightly from day to day. If he is working on the extraction of pillars, which is a retreat after the rooms have been driven up, he continually shortens his travel distance. That variation would create a constantly changing period of work time, productive work time of the employe and that would be multiplied by the number of employes in the mine. When a mine first opens up, there [fol. 76] is no particular problem of travel because the distance is so short. As the mine is developed and coal is produced, the distance increases until the problem requires the transportation of men and mantrips, as evidence of the distance that has been increased in the workings. The agreements providing face to face pay have recognized the impracticability of paying on any other basis because there would be a great difference between the cost between mines and between districts, which would upset the whole market picture, because the consumers of coal can't take into recognition the variations that would come about through payment for travel time. It would create a chaotic condition for the operators and would result in quite a shift in the tonnage into various markets from different districts and mines. From the standpoint of being able to figure out what each man is entitled to, particularly the piece-workers, it would become very difficult, if not almost impossible, and this difficulty is exemplified by the fact that it has produced a temporary chaotic condition in the mines and we don't know how long that will last.

By the Court:

Q. 132. You have indicated that you pay some of your operators on an hourly basis and some on a piece-work basis. I will be glad if you will elaborate on that.

A. The coal miners, who are designated as coal loaders, who actually work at the place where coal is produced, are paid on a piece-work basis, so much a ton, and the men who run the cutting machines and their helpers are paid usually on a piece basis of so much per ton. The work performed by a coal miner is paid for at a fixed rate per ton, which includes all the work he does at his working place, which includes timbering and handling and drilling and shooting his coal. It's a rate to include all those things that he does [fol. 77] in his day's work at his working place, and it has taken into recognition all the factors that go into his employ-

ment. That has always been—well, it's been since 1934, seven hours at the face with payment per ton for each ton that he has loaded out with his check number during that seven hour period.

By Mr. Richardson:

Q. 133. And then the others who are not paid on a piece work basis, explain to the Court who they are and what they do?

A. The machine crews, who are paid on a piece work basis, undercut the coal in our mines. In some of the mines, they cut in a different level in a number of different miners' working places. They are paid a lesser rate per ton, but that rate was figured to compensate them for all the work they do on the section in which they cut the coal.

By the Court:

Q. 134. What do they do that doesn't directly produce coal?

A. Well, when they travel from one working place to another, they are not directly producing coal, but merely going to a place where they can undercut the coal for another coal miner.

By Mr. Richardson:

Q. 135. And then you have men in the mines who are paid on an hourly basis for the time they work?

A. Then we have other men who work as track men in the sections. The track men assist in some of the roof control, the timbering for the roof, lay the track, and do whatever work is necessary to make the haulage roads and other conditions suitable for the production of coal.

Q. 136. They are the so-called company men?

A. They are the company men, paid by the hour for the work they perform at their usual working places. There are other company men— I suppose you want in detail——

[fol. 78] By the Court: I would like some detail.

A. There are main line track men whose job is to lay track and keep the main line track in good condition, which is the track from the tipple on the inside to the last section. The tipple is the point at which the coal is dumped from the mine car through the preparation plant, getting the coal screened into different sizes and prepared for market,

and also into the railroad cars. The main line track goes from that point back in the mine until it reaches the last section of the mine. It requires a crew of men to take care of that track. There are pumpers who look after the pumps located for the control of water in the mines, where there is water that doesn't have natural drainage and accumulates and must be pumped. There are brattice men, who care for the ventilation, the breakthroughs have to be stopped so as to get the proper circulation of air through the working places, and that has to be built, either out of permanent material such as brick or cinder block, or temporary material, such as wood, and the most temporary material is brattice cloth. There are other men who work by the hour, who drill and shoot and load rock that is necessary to be removed either because a fault has occurred that requires a tunnel in rock, or because height is necessary for main line haulage or for other purposes, such as the loading point or the dispatcher's office. There is a dispatcher who is a trip dispatcher, the same as on the railroad, who is ordinarily located inside the mine, and he is paid by the hour, and the foremen and other men. Some are paid by the hour and some are paid a salary by the month. Is that the type of information you wanted?

By the Court: Yes, sir.

By Mr. Richardson: We will go somewhat further into that when Mr. Hagy, the superintendent, testifies and give you more detail.

[fol. 79] By Mr. Richardson:

Q. 137. You referred in your answer to the question in reference to a piece-worker about taking into account in determining the piece rate of pay the various factors entering into their service. Is that true in respect to all of these employes?

By Col. Harris: If he means, if the Court pleases, to inquire as to what entered into their minds in fixing the rate of pay, we object to it because the contracts are written instruments and all prior negotiations and factors are merged in the written instruments and for him to say what went into it is a pure conclusion, and furthermore, if he means by that to imply, without directly asking the ques-

tion, that travel time was taken into account, the testimony of the witness has been that travel time was not taken into account, and he went into an explanation that you couldn't take it into account because it would upset the market, so we think his conclusions as to the factors is purely inadmissible.

By the Court: I overrule the objection. Let an exception be noted.

Question No. 137, as reported, was thereupon read.

A. Yes, the tonnage rate to which I believe you refer for the coal loader was set at a figure to cover all of the factors incident to his employment.

Q. 138. And was that true as to the agreed rate of pay for the specified services to be performed by all the various workmen?

Counsel for the defendants interposed the same objection as previously noted.

By the Court: Overruled.

A. Yes, sir.

Q. 139. Was the necessity of traveling into the mines to the usual working place one of the factors which was included in the determination of these rates, if you know?

A. Yes, it was a factor that was well known to everyone involved in the discussions resulting in final wage agreements, and the rate was determined upon as a practical and [fol. 80] proper method of payment for work performed by the employe.

Q. 140. Then, if I understand you, when you said that no payment has been made to your employes under these contracts for travel time, you meant no payments for travel time as such?

A. That's right.

Q. 141. But if I understand you correctly, the travel time was taken into account as a factor in determining the rates of pay preserved in these contracts and actually paid to your employes?

A. That's right.

Cross-examination.

By Senator Muse:

Q. 1. Dr. St. Clair, I believe in your two mines, the Jewell Ridge, I will refer to, you have what is known as sections in the mines?

A. That's right.

Q. 2. Tell me the number of sections and name them, that are in the Jewell Ridge Mine?

A. I don't believe I can do it without reference to the records.

By Mr. Richardson: May I say, as to the details of the mines and the mining operations, Mr. Hagy will testify and will show all of the locations. I have no objection to the question but there are some of the details as to which Dr. St. Clair may not be informed.

By Senator Muse: That being true, I will confine my questions to him within a compass I think it necessary.

By the Court: I think to interrogate the president of the mine about details which in all likelihood he would not be familiar with would not serve any useful purpose.

By Senator Muse: The travel time he spoke of, he testified about that and I want to cross examine him.

[fol. 81] Q. 3. Doctor, you are not able to state to us correctly the number of sections in either the Jewell Ridge or the Jewel Valley Mines, are you?

A. I know the mines and I know the sections, but I wouldn't like to state specific answers in regard to that.

Q. 4. Are you able to state the distance from the portal at Jewell Ridge back to the various sections?

A. It varies from approximately five thousand feet to approximately twenty-five thousand feet.

Q. 5. Twenty-five thousand feet is about five miles?

A. A little less than five miles.

Q. 6. How about Jewell Valley?

A. It varies there up to approximately twenty or twenty-one thousand feet. It's a little less than Jewell Ridge.

Q. 7. What is the height of the roof of the rail haulage ways at Jewell Ridge?

A. The minimum height is about forty-nine inches from the rail.

Q. 8. Forty-nine inches from the rail?

A. Yes, sir.

Q. 9. Now, do you know the height of the haulage ways back to the various sections after you branch off the main haulage way?

A. I don't know that in detail. It varies considerably.

Q. 10. It is of such a height that a person of average height would have to stoop over in order to walk it, wouldn't he?

A. In some cases he would; in most cases, he would.

Q. 11. Is that also true as to Jewell Valley?

A. Yes.

Q. 12. It is even more pronounced at Jewell Valley, isn't it?

[fol. 82] A. The average height at Jewell Ridge is higher than at Jewell Valley.

Q. 13. What's the average height of the coal seam at Jewell Ridge?

A. The height of the roof, you mean?

Q. 14. Yes.

A. The average height is approximately fifty inches. That doesn't mean the coal is that thick but there is other material comes with the coal.

Q. 15. What's the depth of the seam at Jewell Ridge?

A. Possibly forty-six inches.

Q. 16. How about Jewell Valley?

A. It's lower, about forty to forty-one inches is an average height.

Q. 17. At Jewell Ridge there is a man-station for each section where the men work, is there not?

A. Yes,—a man-trip station, you mean?

Q. 18. Yes, man-trip station?

A. Yes.

Q. 19. When a coal loader reaches a man-trip station, he walks then to his particular room he is working in, does he not?

A. Yes.

Q. 20. That some times goes up as high as a thousand feet or more, doesn't it?

A. Yes.

Q. 21. Now, Doctor, in your direct examination you testified about these man trips. How long would it take a miner at Jewell Ridge to walk from the portal at Jewell Ridge Mine back to the farthest section?

[fol. 83] A. I don't know. It's between four and a half and four and three-quarter miles.

Q. 22. He would have to walk most of that distance in a stooped over position, would he not?

A. Some of it, he would. Most of it, he wouldn't.

Q. 23. Do you know what proportion he would have to walk stooped over?

A. No, I don't know that.

Q. 24. Is there any walkway provided from the portal at the Jewell Ridge Mine back to the various sections for men to walk on,—the miners?

A. There is a clearance beside the main line track, which is merely a space between the track and the coal rib or coal side.

Q. 25. How much is that clearance, Doctor, do you know?

A. When you ask that, do I properly assume that you mean the minimum clearance?

Q. 26. Yes.

A. I don't know. I haven't walked through there——

Q. 27. You haven't walked through there for a long time?

A. I know what it is supposed to be, but I don't know what it is.

Q. 28. There is provided in neither of these mines a walkway for the men to walk in the mines, is there?

A. What do you mean by a walkway?

Q. 29. No preparation made for a space for the men to walk in?

A. Nothing except the clearance between the track and the coal.

Q. 30. And they have to walk over such obstructions as might be on the floor, such as slate or coal or water or anything else that might be there?

[fol. 84] A. If they travel there, if there is any obstruction there, they would have to walk over it.

Q. 31. Do you expect your employes to walk into that mine or ride that mantrip?

A. Well, they may do either. We expect them to ride the man-trip because most of them want to do it.

Q. 32. Do you want them to do it?

A. Yes. There is some advantage to the company and some advantage to the men.

Q. 33. A man working in either of those mines, back this several thousand feet, it would take him some time to make that walk, wouldn't it?

A. Yes, sir.

Q. 34. When he finished the day's work, it would take him some time to get out?

A. It would take longer than going on the man trip.

Q. 35. And when he was walking, he would be constantly in danger of being struck by the haulage, wouldn't he?

A. There is always the possibility of being struck by a trip.

Q. 36. How many men are employed at Jewell Ridge, approximately?

A. Approximately five hundred.

Q. 37. How many at Jewell Valley?

A. Approximately four hundred.

Q. 38. Of these five hundred men—of that number how many, approximately, go in the mines daily?

A. Somewhere around eighty to eighty-five per cent; I will say eighty-five.

Q. 39. If the four hundred men who go into the mine at Jewell Ridge walked in instead of riding, wouldn't it slow [Tol. 85] up the production of coal considerably at Jewell Ridge?

A. It wouldn't be as orderly as going in the man-trips.

Q. 40. How about the quantity of coal produced?

A. The men, I think, would expend more energy walking than riding. I think they would possibly produce less.

Q. 41. These four hundred men walking into that particular mine, would that interfere with the movement of the empties into the mine and the loaded cars out of the mine, to have four hundred men walking in that mine?

A. It's a hypothetical question. We don't have four hundred men walking there.

Q. 42. You have been in the coal business a long time. What do you think would be the result?

A. I think it would interfere to some extent.

Q. 43. How long have you been running the man-trips, Doctor?

A. I don't know. That sort of gradually evolved and they have been running since before my last connection with the Company in 1932.

Q. 44. If you expected these men to walk into the mines instead of riding the man-trips, you would make some travel way for them to walk on, wouldn't you?

A. I don't know of any mine that has done that. A lot of mines, they do walk in, where they are new and don't have a great deal of distance to go.

Q. 45. Do you know of any mines where they walk in a distance of four or five miles?

A. Where all the men walk in?

Q. 46. Yes.

A. No.

[fol. 86] Q. 47. It is customary in the District in which you are located to have man-trips, isn't it?

A. That's right.

Q. 48. Doctor, these contracts you have referred to here as the basic contracts,—in every instance you have executed a supplemental contract with the Local Union, haven't you?

A. That's right.

Q. 49. In fact they do not become effective until they are signed by the Local Union, do they, the basic contracts?

A. We have started to work with the understanding that our local agreement and the Appalachian or Southern or Smokeless Agreements would apply to the period. It was a matter of a few days, usually.

Q. 50. You began to work under the District Agreement, but you actually have your supplemental agreement or you know you are going to have it?

A. We actually go back to work with the understanding that we will sign the supplemental agreement.

Q. 51. I believe the last contract you signed, supplemental agreement, was to the basic contract from April 1, 1941, to April 1, 1943?

A. That's right.

Q. 52. That's the last supplemental contract you have signed, is it not?

A. That's right.

Q. 53. That's the last contract of any kind that you have signed?

A. That's right.

Q. 54. Dealing with your employee relations. Now, Doctor, you stated also that in fixing the wage rates of these men, that portal time was considered. Were you in the Wage Conference in 1941?

[fol. 87] A. No, I was not.

Q. 55. Which resulted in the contract that I have just referred to as expiring April 1, 1943?

A. No, I was not. You are speaking of the Southern Wage Conference?

Q. 56. Yes.

A. No.

Q. 57. How do you know then that the factor of travel time was considered in fixing the basic rate of pay?

A. Because all who were present in that conference were familiar with the conditions under which the miner works and the rate of pay was fixed on a face to face basis to compensate him for all the work he performed.

Q. 58. You, however, were not at that conference?

A. No.

Q. 59. Are you basing that on hearsay or your idea of what occurred?

A. I base it on knowing the men present at that conference and on the contract itself.

Q. 60. The contract itself, which speaks for itself, specifically provides for the rate of pay for the coal loaders at face to face, doesn't it?

A. That's right.

Q. 61. As to the other men, it is their customary working place?

A. I would want to refresh my memory before I would answer specifically what the contract said.

Q. 62. I am talking about the effect of it. That's your recollection, isn't it?

A. Yes.

[fol. 88] Q. 63. This last contract you signed, which expired on April 1, 1943, is absolutely silent as to travel time, isn't it?

A. Would you mind repeating that question?

Question No. 63, as reported, was thereupon read.

A. The contract that was made in 1941, to March 31st, 1943,——

Q. 64. That's the one I am referring to.

A. Has no provision for payment for travel time.

Q. 65. It is silent as to travel time, isn't it.

A. It is silent in that it makes no statement as to travel time.

Q. 66. Does the expression "travel time" appear in that contract?

A. I don't remember that it does.

Q. 67. You certainly don't remember that it does, do you, Doctor?

A. No.

Q. 68. You went into a discussion of the difficulties if these men were paid for travel time. If these men were paid from the time they enter the portal of the mine until they get back, with allowance for lunch time, it would easily solve the problem, wouldn't it?

A. You say if they were paid?

Q. 69. Yes, if you paid them from the time they enter the mine until the time they come out, it would be a very easy calculation, wouldn't it?

A. It would be a very difficult calculation.

Q. 70. You know what time your cars go into the mine, don't you, on man-trips?

A. Do you mean now the piece workers would be changed to an hourly basis?

Q. 71. Now, I am dealing right now with the—I mean this, with proper allowance made for your piece workers, if you [fol. 89] calculate the time when your man-trips enter the portal and the time they come out at the end of the day's work, it would be no serious problem, would it?

A. It would be no problem to determine the time the men were in the mines, but it would be extremely difficult to work out an equitable payment for piece workers.

Q. 72. It would certainly be a simple thing to determine how long a man stayed in your mine?

A. That would be simple, but that isn't the problem.

Q. 73. If you paid them for all the time they were in that mine, it wouldn't be very difficult, would it?

A. It has a good many difficulties in it.

Q. 74. Doctor, you have testified that in fixing these rates of pay, that travel time was a factor considered and included in the rate of pay. If that is true, is it not true that you pay all the men in the same classification the same rate of pay, irrespective of how far they travel?

A. Do you mean by that we pay all the coal loaders the same rate per ton?

Q. 75. Yes.

A. Yes, that's true.

Q. 76. That's true, irrespective of whether they travel for half a mile or five miles, isn't it?

A. That's correct.

Q. 77. You pay the same basic rate in your mines that is paid in the other mines in District No. 28?

A. No, we pay the basic rate paid in District 17.

Q. 78. In District 17. In other words, your men in the same classification get the same rate of pay as the other mines in District 17?

[fol. 90] A. Basic rate. There are some exceptions here that have been filed in these exhibits.

Q. 79. I am talking about the basic rate?

A. Yes.

Q. 80. The travel time in different mines, of course, varies according to the mine?

A. Yes sir.

Q. 81. A mine that has just been opened, the travel time is very short, and a mine opened for a number of years, it may be very great?

A. That's right.

Q. 82. Was any allowance made in the basic rate and in the basic contract for the variation in travel time as between different mines?

A. No.

Q. 83. So that even in your mine, the men in the same classifications get the same rate of pay, no matter how far they travel?

A. That's true, but that doesn't mean that the man who has the longest travel time will always have the longest travel time.

Q. 84. I just don't understand your statement.

A. A man may work out his room in one section and be moved to another section and have a different travel time.

Q. 85. Generally speaking, when a man works in one section, he continues to work there for a long period of time?

A. Generally for a considerable period, yes.

Q. 86. One, two or three years?

A. He may, yes.

Q. 87. Take in one section of your Jewell Ridge Mine called Parallel,—I was back in there,—that's a long way from the portal, isn't it?

[fol. 91] A. Yes, that's the longest distance we have, as a matter of fact.

Q. 88. That's several miles at least, isn't it, Doctor?

A. About four and a half miles,—about twenty-five thousand feet.

Q. 89. The man who works back in the Parallel Section some four and one-half miles from the portal, has the same basic rate of pay as a man who has been working for a year or two in one of the closer sections, probably half a mile from the portal?

A. That's right.

Q. 90. If the travel time was a factor, why does a man who travels four miles in your mine get the same basic rate of pay as a man who travels only half a mile?

A. Because in the judgment of the United Mine Workers and the operators in conference, after years of negotiation, there was no method that they could find that would be as equitable and fair over a period of time as the one that has been worked out in this agreement. The impracticability of paying for travel time has never been solved, so that it could be set forth in an agreement, without bringing about a rather chaotic condition in the industry.

Q. 91. Do the outside men get the same basic rate of pay?

A. They get a lower rate.

Q. 92. Do you have men on the outside who do comparable work to those on the inside?

A. In the expenditure of energy?

Q. 93. No, the classification of work—blacksmiths, for instance?

A. We have some similar men, if that's what you mean.

Q. 94. When I say classification, I mean whatever it is,—do you have men on the outside that might have the same classification as men on the inside?

[fol. 92] A. You mean whether the contract designates a classification which applies to both inside and outside men?

Q. 95. No. Do you have men on the outside working in certain classifications and also have men in that same classification working on the inside?

A. I never thought of it that way.

Q. 96. I'll tell you what I have in mind. I am of opinion that the men on the outside have a different classification as to type of work than the men on the inside.

A. Their work generally is different.

Q. 97. You haven't got anybody at either one of these mines who is doing on the outside the same type of work that is done on the inside, have you, except laying track?

A. Well, track work.

Q. 98. And those same track men who work on the outside of the mine work inside your mine?

A. You have inherently different conditions inside than you have outside.

Q. 99. You talked about men on the outside getting a different rate of pay from the men on the inside. Name me some men outside, or classification outside, who are getting a less rate of pay than the same classification on the inside.

A. May I refer to one of these contracts?

Q. 100. Certainly.

A. We have a dumper inside at 80¢, and a dumper outside at 69.1¢.

Q. 101. What does that dumper do inside?

A. We don't have any inside dumpers inside our mines, [fol. 93] but I assume that's in shaft operation, where he dumps the mine cars.

Q. 102. That's in a shaft operation?

A. That's my understanding.

Q. 103. Take the schedule there in so far as your two mines are concerned, and give me a classification where men on the outside get less than the men on the inside.

A. The only difference that I see here is the designation of all other—You have got a list here of various classifications and at the end, there is a designation of other inside labor, 76.6¢,—that's inside. Outside is common, able-bodied outside labor 65.7¢.

Q. 104. That's as far as looking at your schedule is concerned, the only classification that would seem to be similar outside and inside is common labor?

A. Well, the dumpers.

Q. 105. You don't have any dumpers inside?

A. No, we don't have any dumpers inside.

Q. 106. The common laborer on the outside does what?

A. Well, he does the common labor that's incidental to construction, maintenance.

Q. 107. Is it more dangerous to work inside that mine than to work outside of it?

A. It depends on the job that is being done at either place.

Q. 108. Generally speaking, when you enter that portal and get inside that mine under that mountain, you are in a more dangerous situation than you are outside where the sun can shine on you?

A. I think generally that might be true.

Q. 109. Mines have never been considered the safest place in the world to work, have they?

[fol. 94] A. No, but they have never been properly represented to the public, either.

Q. 110. Anyway, these laborers inside, they help to put up these timbers holding the roof?

A. That's right.

Q. 111. That's a pretty dangerous job, isn't it to put up those timbers to hold the roof?

A. Awfully dangerous some time, if you don't put it up.

Q. 112. It is very dangerous while you are putting it up?

A. There are instances where it is dangerous.

Q. 113. That roof can naturally fall down on a man's head,—that's a possibility, isn't it?

A. Yes, but when a roof is that dangerous, they don't put the timbers up, they take the roof down.

Q. 114. That's what you expect them to do, but sometimes these roofs fall without any preliminary warning?

A. That happens some times.

Q. 115. A common laborer inside the mine is more likely to get run over by one of those trams than he is outside, isn't he?

A. By one of those trams,—yes.

Q. 116. You take a track man, he works inside and outside, doesn't he,—depends upon where he has track to lay?

A. Yes.

Q. 117. If he works outside the mine for a month, do you pay him the same basic rate of pay that you pay him if he works inside the mine that length of time?

A. It used to be—I am not certain now, that your outside gang or your slate dump crew or some other group did [fol. 95] the outside work on the track. To what extent that is done now, I don't know.

Q. 118. You heard a great deal, Doctor, about travel time in the Wage Conference that took place in March, 1943, didn't you?

A. Yes, sir.

Q. 119. You were not present, however, at that conference?

A. No.

Q. 120. But you know there were demands made by the Union for travel time at that conference?

A. That's correct.

Q. 121. In other words, all the news papers carried it?

A. The newspapers carried it, and the Association of which we are a member advised us.

Q. 122. Mr. Burke saw to it that you were kept advised of that negotiation, I take it?

A. That's right.

Q. 123. Do you happen to know, Doctor, whether that conference began on March 19th? I don't know. I understand that's the date.

By Senator Burke: March 10th.

By Senator Must: Can we agree that that conference began on March 10th, 1943.

By Mr. Richardson: Yes, sir, whatever the correct date was.

By Mr. Stuart: The Northern began on March 10th and the Southern began two days later, March 12th.

Q. 124. Do you know, Doctor, whether written demands were made by the Union on March 10th, at one of the Wage Conferences, asserting the contention that under the Wage and Hour Law, that travel time was work time within the meaning of that Act?

A. I don't remember at the moment whether it was writ-[fol. 96] ten or not. I understand that demand was made. I believe it was written, but I don't know whether it was or not.

Re-direct examination.

By Mr. Richardson:

Q. 1. Doctor, in answer to some question in your direct examination you referred to a confusion existing in the determination of present rates. How long has that continued,—how long has that been, the confusion to which you referred?

A. There has been confusion ever since the Secretary of the Interior and Mr. Lewis agreed on provisions requiring payment for travel time.

Q. 2. That was under the arrangement that was made on November 3rd, 1943?

A. Yes.

Q. 3. And it was from that and to that that you referred to this confusion?

A. Yes. There was an uncertainty prior to that time what the final rates would be. The confusion to which I referred began with the provision requiring the payment for travel time.

Q. 4. By the way, Doctor, are you presently operating these mines as a representative of the United States Government?

A. Yes.

Q. 5. The Jewell Ridge Coal Corporation is not at this time operating these mines?

A. That's right. I have been designated as Operating Manager for the mines of the Jewell Ridge Coal Corporation.

Q. 6. Have the coals produced from these mines been sold in the markets generally throughout the time you have been connected with it?

[fol. 97] A. It has been sold in the markets in which coal in the Southern Field is generally sold.

Q. 7. They are what is known as commercial mines?

A. That's right.

Q. 8. Give me some idea of the proportion of the producing cost represented by the labor going into the production of coal?

A. Well, the labor cost generally is in the neighborhood of two-thirds of the total cost.

Q. 9. And have the selling prices of this coal throughout your experience with the mines been predicated upon cost determination on this face to face basis of production?

A. They have, yes.

Q. 10. You were asked certain questions as to whether or not payment for all of the time elapsing from the time the inside worker entered until he emerged from the portal would make it easy to dispose of the problem. What would you say as to the problem of selling commercial coal, the established price of which is based, as you have stated, on this face to face labor problem?

The defendants, by counsel, objected to the foregoing question, which objection the Court overruled.

A. I have just stated in reply to your question that the selling prices were based on the cost which we experienced during the face to face method of payment. If we go to the payment of travel time, it would materially increase our cost, but it may not increase our competitor's cost to

the same extent. It may be less or more. One of the difficulties in payment of travel time may be exemplified by the coal miner who would go in there and load one car. We have some men who do load one car and come out, and if we were to pay them for that car the tonnage rate plus [fol. 98] travel time, in and out, the cost of that coal he loaded would be exorbitantly high, much higher than the man who went in and loaded five cars, because we would have five cars to distribute that travel time over instead of one. That's just one of the problems that come up in this payment for travel time.

Q. 11. Is there a problem competitive in character that is neeessarily present as between mines having a longer travel distance and those having a shorter travel distance. I mean, on the average, is there a competitive difficulty that would result from a shift from a face to face basis of pay to the portal to portal basis if pay?

A. It would disrupt the relative costs between mines and districts and cause a shift of tonnage in the markets. Is that what you mean?

Q. 12. Yes. You say it would disrupt it. Drawing upon your experience in selling coal, what effect would it have upon those mines which have the longer travel time?

A. The mines that have the longer travel time would be put at a competitive disadvantage because their cost would be higher and they would have to find some means to place their coal at a higher cost than other mines, or have a disadvantage by having to reduce the margin on which they operate. They would have a competitive disadvantage in the amount that the travel time cost them more than it cost their competitor.

Q. 13. Doctor, when coal was being sold on a competitive basis, I mean before the stimulus of war demand was felt in the markets, state whether or not a difference in price of a few cents per ton made the difference in a sale?

A. Yes, in many cases it did. In some cases, one cent a ton would make a difference, where coal was sold on bids, but in the general commercial market, coals of equal quality, industrial coals of equal quality, were sold to the same [fol. 99] customer at practically the same prices. Five cents difference might be the cause of losing a contract.

Q. 14. So the mine on portal to portal basis having the longer travel time would have a handicap which would

create a real obstacle in its competitive position in the market?

A. In any normal market, it would create a very definite handicap.

Q. 15. You were asked some questions as to the hazards encountered by men within the mines as compared with those outside of the mines. During the years you have worked at the mines, where do you find men prefer to work, inside or out?

A. Well, that's a hard question to answer, because the men who come to apply there know we are mining coal and most of the applicants for jobs that we have are men who expect to work underground, and who appear to prefer to work underground.

Q. 16. And that is so as to men who are entirely familiar with the conditions encountered underground?

A. That's right.

Re-cross-examination.

By Senator Muse:

Q. 1. Doctor, is it not a fact that competitive costs are affected by many varying factors, such as thickness of seam, character of roof, presence of impurities, length of haul, freight rates, etc.?

A. That is right, yes.

Q. 2. Also, coals of different grades and chemical compositions sell at different prices?

A. That's right.

[fol. 100] Q. 3. So this question of portal to portal pay or travel pay would be only one of many factors that have to now be considered by an operator?

A. Over a long period, there has been an established relationship developed between the mines operating and producing coal, some of whom were unable, because of various factors, to continue and have gone out of business, and others continue to operate, and this would bring in a new factor which would be disruptive to those who have gotten into an established market and position.

Q. 4. The factor of economic conditions has always to be considered, whether the country is demanding coal, or whether it is a drug on the market?

A. Yes, sir.

Q. 5. The factors change from time to time, do they not?

A. They do, and I was directing my other answers to what we think of but I can't define as a normal market or an average market.

Q. 6. The Government, in fixing prices in different Districts, takes into consideration the varying factors, don't they?

A. That's right.

Q. 7. You are never going to stabilize and get fixed all the factors to be considered in the price of coal, are you?

A. I should say not, from my experience.

Witness stands aside.

At this point, it being 1:00 o'clock P.M., a recess was taken until 2:00 o'clock P.M., at which time the trial of this case was resumed.

[fol. 101] J. A. Hagy, another witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Richardson:

Q. 1. Your name is J. A. Hagy?

A. Yes, sir.

Q. 2. Where do you live?

A. I live at Jewell Ridge, Virginia.

Q. 3. What is your profession?

A. My profession is coal mining engineer. At the present, I am superintendent.

Q. 4. What technical equipment and preparation did you have for that professional work?

A. In my days that I was in high school, during the summertime, I mean during the vacation, I worked in coal mines, worked on an engineering corps, and then I went to college and received a degree in coal mining engineering.

Q. 5. At what college?

A. VPI—Virginia Polytechnic Institute.

Q. 6. And what connection do you now have with the Jewell Ridge Coal Corporation?

A. I am superintendent of their two coal mining operations.

Q. 7. That is the Jewell Ridge operation and the Jewell Valley operation?

A. The Jewell Ridge operation and the Jewell Valley operation.

Q. 8. How long have you been superintendent of those two operations?

A. I have been superintendent since February, 1942.

[fol. 102] Q. 9. In your work as superintendent, have you been active in and about these two mines?

A. During the time that I have been superintendent, I have been in the mines probably sixty per cent of the time. I go in each mine at least once a week, and a lot of times I go in the mines, one or the other, every day during the week.

Q. 10. And all over the mines?

A. All over the mines; walk most of the distance.

Q. 11. All of the men who are employed at these mines work under your general supervision?

A. Yes, sir, all the men who are employed in the mine and around the mine and at the mine, outside at the camp in maintenance work, are all under my direction.

Q. 12. Give the Court a general idea of the location of these mines.

A. The Jewell Ridge Mine, the one we call the No. 1 Mine, is located at—the post office there is Jewell Ridge, Virginia. It's in the northwest portion of Tazewell County, about forty-five miles west of Bluefield, West Virginia. It is nine miles north, approximately, from Richlands, Virginia. Our No. 2 Mine, or Jewell Valley Mine, is about eighteen miles north of Richlands, Virginia, and about thirty-five miles east of Grundy, Virginia, that mine being in Buchanan County. However, our property, part of it, is in McDowell County, West Virginia, and about five-sixths of it, or maybe a little less, is in Buchanan County, and the remainder is in Tazewell County.

Q. 13. Is it all one body of land on which these two mines are located?

A. Yes, it's all one body of land. It's all adjoining.

Q. 14. What's the general character of that land, as to [fol. 103] whether it is hilly, mountainous, or otherwise?

A. This tract of land lies on the mountain tops, on the main dividing ridge between Dry Fork, Dismal and Middle Creeks, which empties into Clinch River, and it is very mountainous. We have deep valleys. The coal seam itself is up right high on the mountain, right high above

water level, some places two-thirds of the way to the top of the mountain, and others it is down about half way, and at others, maybe a little further, one-fourth of the way, and we have streams that run in all directions over this tract of land, some that run south, going to Clinch, and some west into Dismal, and another to Big Sandy and on to the Ohio, and some streams that run east that empty into Dry Fork; so from that I might explain, we have a lot of hollows where the outcrop is up on the hill, and we can cut out anywhere we wish for drainage or ventilation or for someone to enter.

Q. 15. What do you mean by the outcrop?

A. The outcrop, a seam of coal is practically level, and where the mountain has washed away and leaves a valley, somewhere up on the mountain side that seam of coal comes to the surface, and where that seam of coal comes to the surface, we call that an outcrop.

Q. 16. What seam of coal are you operating there?

A. We operate the Jewell Seam. That's what the seam is called locally—the Jewell Seam.

Q. 17. And what is the thickness of the seam at the two mines?

A. Normally, at the No. 1 mine, the seam thickness ranges from forty-four inches to fifty-four inches. Of course there are places where we have faults or wants. A want is a place where you are supposed to have coal and don't have it, due to some fault in the strata, the sandstone might come down and cut the coal out, and you don't have coal in those places, and generally, right beside that, the coal [fol. 104] might go up to ten feet high, but generally the coal is from forty-four to fifty-four inches at No. 1 Mine. At No. 2 Mine the coal is a little thinner, but it ranges from thirty-two to forty-four inches. Our engineers show we have an average thickness of forty-two inches at the No. 2 Mine, but that thickness varies. Our seam is a seam of coal that is a little different from the seams in West Virginia, due to the fact that we have faulty conditions. The seam lies on the north side of a big fault that goes all the way through from Pocahontas, Virginia, down into Tennessee, and our seam is wavy. Ordinarily, it is horizontal, but dips slightly to the northwest, and sometimes it may dip several percent, and we have anticlines and synclines, and dips and swags and valleys, but these don't amount to

much. They are not like you have in an anthracite seam. Our seam is classed as being level?

Q. 18. These are drift mines?

A. Yes, these two are drift mines. By a drift mine I mean the opening is on a hillside where we drive our workings in the seam of coal and they go in horizontally.

Q. 19. These workings obviously begin at the outcrop and penetrate further and further into the hill as you continue your workings?

A. That's true.

Q. 20. What is the general character of the top?

A. Our seam over there in that section has a strata that is practically level, as I mentioned before, and right over the coal is a sandy shale that ranges in thickness from nothing up to about twenty-five feet, and it varies in thickness over the entire area. Every thousand feet that thickness will vary. Above that, we have a sandstone strata. That sandstone strata is about fifteen to twenty feet, and above that we have a rotten shale that weathers badly, and all these roof conditions enter into the mine. This lower portion just over the seam, that sandy shale, will weather [fol. 105] when exposed to air. In the mine generally there is always from two inches up to about two feet of that sandy shale that comes with the mining. It might not come the very day the coal is taken out, but as it is exposed to air, in a week or two weeks, we may have to go back and take that roof and we call that draw rock. That's where the term comes from.

Q. 21. The draw rock is the slate that comes down with the shooting of the coal that you mine?

A. Yes, it has a tendency to come. However, we prevent it from coming by setting timbers and cross-collars. A cross-collar is a horizontal beam that we use with a piece under each end, and that makes a truss affair.

Q. 22. These timbers you set, do they support the entire superstructure of rock above the mined area, or do they support just the strata immediately above?

A. The purpose of all timbering is merely to support that strata above the coal, which would be called draw rock, which may range as thick as four or five feet, but generally will average around eighteen inches up to two feet.

Q. 23, Can you tell which of the rock is apt to fall?

A. Yes, an experienced miner,—by that I mean a man that's been in the mine probably six months, can handle

roof conditions very nicely, very thoroughly, and the manner they use to test this roof is by holding their hand on it and hitting it with a pick or iron bar or something, and when they do that, that roof vibrates and the miner uses his judgment as to what to do about it, as to how thick it is, whether it will pay him to take it down without timbering it, or pay him to timber it, whichever is best.

Q. 24. About the bottom, the material just under the coal, what is that?

[fol. 106] A. Right under the coal we generally have a fire clay strata which may be three or four feet thick. That fire clay will weather rather rapidly and hold moisture, but while the coal is being mined, before the air gets to it, before it absorbs any moisture, it is hard, and easy to run a cutting machine on it.

Q. 25. On this matter of supporting the roof, the miner has the advice of his foreman as to when and where to place his timbers, does he?

A. Yes, in a way, he does. The miner, when he goes in a place, a working place where he starts work, he has had ordinarily enough experience to know what to do. The foreman comes into his place as quickly as he can after the shift starts, and when he comes in, he instructs the man to do anything he hasn't already done. The miner sets his timbers and gets his machine cuttings out from under his cut and all like that until the foreman gets there. Generally, that man has had enough experience to go on with his work. However, some man who is not experienced will have to work for a period of time with someone who is experienced before he will be turned loose to look out for himself.

Q. 26. Your progress in mining is ordinarily along entries which are used for haulways and airways, are they?

A. Whenever I look at a mine map, it reminds me of a map of a town, with six or eight entries advancing ahead, which you might compare with streets in a town, on a town map, and at right angles off of that, there will be entries from which rooms are turned, and those will be at right angles, and there will be two of them and they go down three hundred feet, which will be a room length, and then there will be two more, and so on and so on, and off these cross entries the rooms turn,—that might represent alleys or something like that. I made that com-

parison to kind of give an idea of what a mine map looks like.

[fol. 107] Q. 27. Are the rooms the places where the coal is actually mined?

A. We get a certain amount of our coal from our advance work in our entries, but around probably ninety percent of our production comes from rooms and air-courses and break-throughs. What a breakthrough is—we always drive an entry, that's where the track goes, where the men generally travel, where we take all the height we need, and parallel with that, over about sixty feet, we have an air-course. What happens there, the ventilation goes up the entry and back down the air-course, and as we advance this place, about every eighty feet, we drive a cross-cut, drive an entry from the entry over to the air course, for haulage, but the main purpose is to make an opening so we can circulate the air around, and most of our tonnage comes from rooms that are driven off the entries and air-courses.

Q. 28. These entries which you refer to as comparable to streets in a city are the avenues or courses along which your travel occurs in the mine and your haulage is done.

A. That's true.

Q. 29. Tell the Court, please, the height of your entries in these two mines, Jewell Ridge first.

A. At Jewell Ridge Mine, as I mentioned before, the height is from forty-four to fifty-four inches. As we haul through——

Q. 30. Are you speaking of the minimum height?

A. Yes, I am going to explain why they get higher. As we haul through those, after the coal is extracted, the weather, the air has an effect on the draw rock, and generally that draw rock comes and gives us additional height, sometimes six or seven feet or thicker, and that gives us all that height, and other places it does not come, and we have to shoot that to clear our haulage locomotives that haul the coal from the sections to the tipple.

[fol. 108] By the Court:

Q. 31. What is the height of one of those locomotives?

A. About forty-seven inches, but we have a trolley pole on top and this goes up to a trolley wire, but you have to have a height like that for your trolley pole to work on

so he will have pull to follow the trolley wire, so you have a minimum height of at least forty-seven inches for the haulage motor, or up to maybe five or six or seven or eight feet, whatever it may be.

By Mr. Richardson:

Q. 32. The Court asked you how high is the locomotive?

A. Forty-seven inches.

Q. 33. Is that the locomotive itself?

A. Yes, sir.

Q. 34. Above the rail?

A. Yes, sir. All the distances I mentioned are above the rail.

Q. 35. Forty-seven inches above the rail takes you to the top of the locomotive or the top of the trolley?

A. No, it's the top of the locomotive, not the top of the trolley. For instance, we have a rock loader we bought the other day and put over in the Parallel, the farthest section from the drift mouth, and we took that all the way through without having to shoot any rock any where.

Q. 36. What is the minimum height of your haulage locomotives in the Jewell Ridge Mine?

A. We have to have enough height to clear those locomotives I just mentioned. That's on the main haulage. On secondary haulage, we have other locomotives that we have to have around four feet of height, four feet or over,—that's for our ten ton haulage locomotives. Over at [fol. 109] Jewell Valley, we try to maintain on our main line forty-eight inches of clearance. However, on our secondary haulage over there, we don't take any more roof than we have to but we do have to take enough to clear these fifteen ton haulage locomotives and the mine cars.

Q. 37. And your cross entries, are they of comparable height?

A. We maintain a height on our cross entries of forty-two inches above the rail. However, in the past, we haven't taken that much roof, because we have never seen that it was necessary, because we run the man-trips right up to the section where the men work, and in those low sections we run the man-trip on further than the man-station, and those miners get out at the mouth of their working places, rooms.

Q. 38. Give me some idea of the capacity, the output of these mines, if you please.

A. We have equipment at each mine to average three thousand tons a day at each mine, or we were averaging about six or seven months ago near five thousand tons a day at the two mines combined. At the present time, we are running around about thirty-six hundred and twenty-five tons a day. The reason we have that drop in tonnage is because we do not have the man power.

By Mr. Richardson: If Your Honor please, frankly I am asking a number of questions to help familiarize the Court with the details of this mine and the issues involved.

By the Court: I think your questions are all pertinent and helpful so far,—that is, pertinent to the situation the Court finds himself in, whether pertinent to the issue or not.

Q. 39. Your mines are served by what railroad?

A. Both mines are served by the Norfolk & Western Railroad. However, they are served by different branches. The Jewell Ridge Mine is served by the Norfolk & Western on the Clinch Valley Branch, which means all of our coal comes by Bluefield. The Jewell Valley Mine is served by [fol. 110] the Norfolk & Western also, but that coal goes out down by Williamson, West Virginia.

Q. 40. What highways serve the communities at these mining points?

A. We have a highway leading off one of the main highways at Claypool Hill, going to Grundy.

Q. 41. Is Claypool Hill a point on one of the thoroughfares?

A. Yes, and it passes through the town of Richlands, and at Richlands we have a paved road that goes north up to Jewell Ridge and continues on over to Dismal Creek in Buchanan County. However, the road from Jewell Ridge to Jewell Valley is rock-based, an all-weather road, but at Dismal Creek up to Jewell Valley camp, which is around two miles, it is paved. At this place where I mentioned that the rock base road goes over the mountain and down a ridge to Dismal Creek, there is another road that comes in there that is not rock-based, but it has enough rock on it to make it an all-winter road. From all those ridges we have dirt roads, practically every ridge over there as a dirt road. Over in that section, we don't have

many roads in the valleys. They are all up on the ridges, and the men who work at the mines come in in all directions by these dirt roads, rock-based roads and hard surface roads.

Q. 42. These rock based roads you have spoken of lead into a point very close to the main entrances to the mines?

A. The road coming from Richlands to Jewell Ridge is a hard-top road. It passes by our Jewell Ridge tipple and continues on up about three thousand feet, or two thousand feet, I would say.

Q. 43. Does that also pass by the main entrance to the Jewell Ridge Mine?

A. That's what I was going to get to. It passes right by the main entrance to the Jewell Ridge Mine. Over at [fol. 111] Jewell Valley, the road there goes by the tipple and on up through the camp, and the miners walk from the road on up to the drift, which is about two hundred and fifty feet difference in elevation, so the roads go to the main drift at each mine.

Q. 44. You have referred to other openings out of these mines. Are any of the other openings from the mines immediately alongside either of the paved roads?

A. As I mentioned once before, there are many openings to the outside, the outcrop openings for drainage and ventilation and for people to enter. At the No. 1 Mine we have a road that follows the main ridge, what we call the Bear Wallow Ridge, for several miles. By going out that road in automobiles and dropping over the hill to outcrop openings, a person can enter at various places over there and be at any place in the mine, I would say, in twenty to twenty-five minutes, due to all these openings in the outcrop along the country roads.

Q. 45. They are along the country roads, but if I understand, not along the side of any of the paved roads?

A. No, not along the side of any of the paved roads.

Q. 46. You referred awhile ago to the tipple. Just where is that in reference to the drift mouth or main entrance to the mine?

A. At the Jewell Ridge Mine, the tipple is something like two thousand feet down the hollow below the drift to the mine.

Q. 47. You mean the entrance to the mine?

A. I mean the main drift, that's the entrance. Over at the Jewell Valley Mine, the top of the tipple, which is the

head-house, is right in one of the drifts where people enter.

Q. 48. What is done at the tipple?

A. The tipple is a structure where the coal is dumped out of the mine cars, the mine cars are turned over or [fol. 112] turned up on their ends and the coal slides out in a hopper. That coal is transferred down the hill to an elevation where it can be loaded into railroad cars, to what we call the lower tipple. That tipple screens the coal, sizes it and treats it, gives it a dust-treating solution, the egg and the lump sizes are treated with Coal-Add, and the finer coal, the pea size and nut size and stove size, are washed and treated with calcium chloride and the coal is loaded into the railroad car according to size. Our Jewell Valley tipple has six tracks, so that we can load six grades at one time. Over at the No. 1 Tipple, we can load four grades at one time.

Q. 49. By grades, you mean size?

A. We call it grades. That's a mining term, but we mean size.

Q. 50. Is all of that done mechanically?

A. All of it is done mechanically, except at each tipple we have a Bone-picker. That's a man who sits alongside the loading boom and picks out the impurities by hand.

Q. 51. Those impurities you call bone?

A. Bone or slate.

Q. 52. You do have men who work around about that tipple?

A. Yes, we have something like around twenty-five men on each tipple, who operate the tipple.

Q. 53. You said they were mechanically operated, but you do require man-power as well, to assist in operating the tipple?

A. Yes, all the tipple is operated mechanically, electrically.

Q. 54. You have in addition to the tipple, repair shops, machine shops outside the mine, do you not?

A. Yes. At the No. 2 Mine, we have a repair shop, a mine car repair shop. We repair mining machines which cut the coal, locomotives which haul the coal, pimps, compressors, drills and such as that. All armature winding [fol. 113] and such as that is taken to our No. 1 Mine. At No. 1 Mine we have a master shop over there. We wind armatures, do all electrical work there, repair mine cars,

pumps, fans, locomotives, and everything incidental to mining.

Q. 55. You have various persons employed in and about those machine shops?

A. Yes.

Q. 56. You have referred to different kinds of equipment, motors, cutting machines, and the pumps, and so forth. Those are mechanical appliances which are used in the mine and in the mining operations?

A. That is correct.

Q. 57. They are electrically operated?

A. Yes, electrically operated.

Q. 58. How are the mines ventilated?

A. Each mine is ventilated by a series, a number of fans driven electrically. Our No. 2 Mine has three fans. One of them is on Aily's Branch,—someone might refer to that later. That produces around one hundred thousand cubic feet per minute, and we have one on one of our operating sections that we call One South, that ventilates only one section, and we have some mine workings across a hollow away from the main body, that we call Peake's Branch, and we have a fan over there. It's a good size fan. That fan makes around fifteen thousand feet of air a minute. At our No. 1 Mine, we have seven fans. Where we cut outside at those different openings, we can always put a fan in the one closest to the face, and that way, we reduce the resistance to the air and get better ventilation at the working place, so we have seven fans in our No. 1 Mine.

Q. 59. Do you have contrivances or proper channels through which the fresh air is forced by these fans?

[fol. 114] A. We do. We have air-ways provided for the air to go in through the various working places all around the working places and come back and return out another opening.

Q. 60. Is that accurately designed to provide a movement of air through every working place in the mine?

A. It is. We have a Mining Law which requires us to have a certain amount of air per man on every air circuit.

Q. 61. Do you have facilities for testing the amount of fresh air you have in there?

A. Yes, we have instruments to test how much air we have, and also have instruments to test the gas we may have in there. However, we have never found any gas yet.

Q. 62. Are those instruments sensitive and highly applicable to the use for which they are intended?

A. We use a methane detector that's manufactured by one of the mine safety appliance companies, and for a long time we had a safety inspector that inspected each place in the mine as he got to it, which would probably be six weeks or seven weeks, a Mr. Miller, and still we have another inspector that follows up the same kind of work. We have never found any gas in it. The sensitiveness of that detector is about one part in one thousand. It's even less than that, but that's accurate.

Q. 63. What can you say as to the general volume of fresh air that you force through the mine workings in these mines as compared with the minimum standards set up by law?

A. We force more air through the mine than what the law requires us to do. The secret of getting air to the working place is maintaining the stoppings,—that's a structure you build in the breakthrough to keep air from getting through it. In each breakthrough, we build what we call [fol. 115] a stopping. It's built at our mine of cinder block and take plaster and plaster it, ordinary house plaster, wood fibre, and that makes that stopping air tight, and by using those, we force the air to the face.

Q. 64. What about the volume of dust in this mine or these mines, Mr. Hagy?

A. We do not have a dust that easily gets in suspension. A miner can go in our mine over there, either one of the mines, and work all day, and he comes out and he is not as black as he would be in the average coal mine. Our dust has a tendency to have right much moisture in it, and this fire clay bottom that I mentioned before has right much moisture, and some of the moisture probably gets into the dust from that moisture that is in the floor, and we sell our coal over there to right many people down in this section of the country and we often hear someone say the reason they like our coal is because they can dump it into their basement and the dust will not get into suspension and go up in the house or on the clothes line, so I mention that to more or less explain why the dust isn't had to get in suspension.

Q. 65. Dust is encountered in all mines in greater or less quantities?

A. Yes. You have a certain amount. Right much of the dust, of course, is made from the cutting machines.

Q. 66. Where do you find the most of the dust, on the entries where the hauling is done or in the rooms where the loading is done?

A. We have more dust in the rooms, because in the entries we load all the dust out, and after we load it out, as the place is being worked, there is never any dust that amounts to anything collects back there. We have got mine cars that don't sieve out dust out of the mine cars, and we keep all the dust loaded out of the entries and haulways.

[fol. 116] Q. 67. What about the general level of temperature throughout the mine?

A. The temperature in the mine is fairly consistent the entire year. It runs somewhere between fifty eight and sixty five degrees. That's about the right temperature that a fellow would want that works hard, just about a pleasant temperature to have. Of course, if a fellow sits down and is idle, and doesn't do anything, he has a tendency to get cold, but as long as he is working, it is just exactly the temperature he would want, a very pleasant temperature.

Q. 68. At Mine No. 1, or the Jewell Ridge Mine, give me the number of outside men that you had at some time, say the first day of this month?

A. The first day of November, I had seventy-nine outside men at No. 1 Mine.

Q. 69. That included all the men who worked at the tipple and in the machine shop and in the company store?

A. I have no tabulation of all that's in the store. At the No. 1 Mine, going into detail——

Q. 70. I don't think you need to give the detail.

A. Engineering department, power house, mine foremen, superintendent, inspector, chief electrician, carpenters and all other outside men, we had one hundred and seventy-two at No. 1.

Q. 71. What date was that?

A. I am wrong,—one hundred and seventy-three.—November 1st.

Q. 72. This year?

A. Yes sir. On August 15th, we had one hundred and seventy-two.

Q. 73. How many was that?

A. On November 1st?

Q. 74. You gave another date.

[fol. 117] A. August 15th was the first one I gave.

Q. 75. How many inside men altogether on those same dates?

A. August 15th, the machine men, inside slate men, motormen, and all like that, I had a total of 192 company men.

Q. 76. How many loaders?

A. Two hundred and seventy-three, making a total of four hundred and sixty-five men inside at the No. 1 Mine.

Q. 77. Give me the same thing as to your November 1st date.

A. November 1st, I have one hundred and ninety-five company men at No. 1, and one hundred and seventy-five coal loaders, making a total of four hundred and sixty inside. Let me check that. I believe I got on the wrong line there,—coal loaders No. 1 Mine, August 15, two hundred and seventy-three. Is that right, what I gave you?

Q. 78. Yes.

A. And two hundred and sixty-five, November 1st, and at the No. 2 Mine, Company men, I have one hundred and fifty-six on August 15th.

By Mr. Stuart:

Q. 79. That's inside?

A. Yes, sir, that's inside.

By Mr. Richardson:

Q. 80. How many was that?

A. One hundred and fifty-six company men inside, and one hundred and ninety-five coal loaders inside,—that's August 15th, No. 2 Mine. November 1st, I had one hundred and fifty-four company men inside at No. 2, and one hundred and seventy-five coal loaders.

Q. 81. How many outside men altogether at No. 2 on those two dates?

A. I have forty-nine on the outside at No. 2 on August 15th, and forty-eight on November 1st. The reason for being more men at No. 1 than at No. 2, all our shops are over [fol. 118] there, our maintenance crews for the camps and powerhouse and things like that.

Q. 82. Where, in general, do these outside men perform their duties?

A. We have various types of work outside. We have carpenters who maintain the camp,—their work is right

in the camp. We have tipple men, their work is in the tipple and around the tipple. Our shop men, their job is in the shop repairing anything that's brought in, but occasionally they might be sent out to one of the openings where we have a fan or might be sent to repair a pump or something like that, but they work wherever they have work to do.

Q. 83. Those men who have work to do at certain places, report for work where?

A. At the regular place where they work. The men in the shop report at the shop. The men in the tipple report at the tipple.

Q. 84. As to the men on the inside, speaking as of the coal loaders, do they have a regular place at which to work?

A. Yes, they have regular places at which to work. Of course, as I made mention, some work out occasionally, but they all have a regular place at which to work.

Q. 85. How is that determined, the location of that place?

A. The location is determined by the foreman. The foreman will give a man a certain place to work and he will work there until he finishes it, drives it to the extreme limits or gets so far and has to wait on ventilation, and that fellow will have to be changed from that place to another working place. The foreman has charge of that.

Q. 86. Is the place at which a man works, his usual working place in the mine, a permanent, static thing, or does it change from time to time?

[fol. 119] A. It is more or less permanent in one sense, and in another sense, it advances. A coal loader driving a heading will take a cut of coal at each shift. That means he advances his place six or seven feet. If he works three hundred days a year he will advance it twenty-one hundred feet during the year. The place is still there but it gradually advances. If he is coming back on pillar work, he gradually comes back.

Q. 87. Is this typical man of whom you speak some times moved by the foreman from one section of the mine to work in another section?

A. Yes, occasionally.

Q. 88. We are still speaking about coal loaders. Would you say that they have definite, certain and well-defined places at which to perform their duties?

A. Yes, I would.

Q. 89. Where, according to practice, have those men reported for their work for the company?

A. Each man, each coal loader,—I have reference to coal loaders right now, reports to his place of work, his working place, each morning.

Q. 90. Is there any requirement by the management of these men as to the performance of any duty before they arrive at their usual working place?

A. A coal loader has to start work in his working place, due to the fact that his tools are there. His tools and equipment is always there, other than explosives. He leaves them there the day before. The man, the coal loader, reports to his working place in the morning.

Q. 91. I asked you if there is any requirement by the management, you or those under you, for the performance of any duty or to do anything before they arrive at their usual working places.

[fol. 120] A. No, they are not asked to do anything, unless you have a slate fall or something. If you do that, you pay them extra for it.

Q. 92. That is not usual work?

A. No, that isn't usual work.

Q. 93. And if they are called upon to do such emergency work, they cease to be coal loaders and are paid as such?

A. What extra work they do is paid on a day basis.

Q. 94. Is there anything at any time under any circumstances required of your coal loaders before they arrive at their usual working places in the mine?

A. No.

Q. 95. You have referred to another general type of employes inside, namely company men. Explain to the Court, if you please, what that term "company men" includes?

A. In mining, we have to have other employes than the coal loaders,—have to have other employes. Those employes are men who lay the track, do track work. There are other men who build stoppings. Other men who help the coal loader set timbers that he is not able to handle himself, for instance, to help a coal loader set cross-collars or headers, and there are company men who might help move slate or anything like that. Those men are paid by the hour. They do not do any piece work. They are paid by the hour and they have tools that they keep with them. They go from place to place. They will go in one coal

loader's place and lay the track. They might help him set a header or cross-collar. When that work is completed in that place, they may go on to another place. However, they are paid by the hour and they are paid for walking from that place over to the next. When the shift is over with, they come out and have a place to put these tools. [fol. 121] They are at the tool house at quitting time. That's when the shift's work is over. They are there when the shift's work starts. It so happens the foreman has to be a man who has a Federal explosives license, and the foreman, as soon as they go on the shift, issues powder to the coal loaders who need powder that day, and after he issues the powder, he goes to the man station and sees these company men, they are down there, and he directs them what to do. Often these company men go on and will be doing their work without even seeing the foreman, because it is routine. They will go on at their starting time and they have a circuit that they generally make. They know who is going to clean up first. They know who has to have track first. They know who has a cut, or a piece of a cut, so, therefore, they go over the entire section.

Q. 96. You refer to a man-station or man-trip station. What is that?

A. We run the trips from the outside to the sections, and some place on that section, we will have a man-trip station and that's where the men get off the man-trip, and from there they go on to their working places. Some where near that place is a powder magazine and the men who have to have powder go up there and get the powder for that day's work only.

Q. 97. To digress a moment, and discuss that matter of powder,—you have a main powder magazine on the outside of the mine, do you not?

A. Yes.

Q. 98. And you keep in the powder magazines on the several sections in the mine such powder as is required for the day's operation?

A. We have our powder delivered to each section on an off shift.

Q. 99. What do you mean by an off shift?

[fol. 122] A. If that section is working in the day time, that powder is taken in at night when nobody is around, and he takes enough powder in there, he has an order for

how many sticks he is going to need the next shift, and he takes the exact number, and that's checked out to him. The fellow who handles the explosives has to have a Federal Explosives Certificate, and he puts in each magazine on each section just exactly the amount of powder that section will use the next day on the following shift, and from there, it is issued out to the men who use it.

Q. 100. To make that clear, does each loader at the end of the day give a memorandum to the foreman for the amount of powder he will require for the next day's work?

A. That's true. He does.

Q. 101. Is that the powder that's brought from the main magazine out to these section magazines.

A. Yes, that's true.

Q. 102. On that question of the powder, you are speaking now of the No. 1 Mine where powder is used?

A. Yes.

Q. 103. What do you use in the place of powder at the No. 2 Mine?

A. At No. 2 Mine, we do not use permissible powder. We use Cardox. That's an iron tube, round pipe, that has gas in it, carbon dioxide, and we shoot our coal with that. How that operates is something like this,—they have this pipe and fill it with carbon dioxide gas, and there is a little heater, so that when electricity is applied, it will go ahead and it will expand that gas and it will sear a little disk and that gas escapes and shoots the coal. That's safe to handle and we can haul that around as we wish. At the No. 2 Mine, we deliver that explosive right in the working place. A locomotive crew will take that right in the working place.

[fol. 123] Q. 104. Is that delivered to the working place by company men?

A. By company men.

Q. 105. These company men you mention have duties to perform in certain sections of the mine, do they not?

A. Yes.

Q. 106. A company man will be assigned to a section or area of the mine in which to work?

A. Yes.

Q. 107. Is that true of all company men?

A. They all—repeat that question.

Q. 108. I am asking you if all of the company men have a certain section of the mine in which to work. Some of the company men have to go all over the mine, don't they?

A. Yes, sir. I understand your question. For instance, our main line track men cover all the main haulage track, which extends from the tipple all the way in to, you might say, the section, and at the section where the main line track men leave off, the section track men maintain it from there on in; and we have the pumpers, they go over the entire mine, wherever we may have a pump, and our ventilation men do the same thing, they cover the entire mine. Generally speaking, though, in a mine like Jewell Valley, we have three or four brattice men over there, and we divide that up in sections,—one brattice man may have two or three coal loading sections under him, and the trolley men maintain all the trolley wire, and the sub-station men look after that.

Q. 109. Those men who have jobs to do within a certain section or area of the mine, do they have anything else to do elsewhere than within that area?

A. No, those who are put on a section work only on that section.

[fol. 124] Q. 110. Where do those men report to begin work, their day's work?

A. They generally report at the tool box or somewhere near the man station, so they can speak to the section boss.

Q. 111. Do you have a tool box at or near the man-station on each section?

A. Yes, either a box or a place where the men gather and store their tools.

Q. 112. These men who you say have duties to perform in the respective sections or areas and who report at or near the tool box, does the management require anything of those men, any duty to perform at any time until they arrive at these sections where they are to do their work?

A. I would say no, unless you have something in an emergency to do, and if you do have something in an emergency to be done, that are paid extra. Their starting time will be before the regular starting time.

Q. 113. You have referred to certain of your company men who have duties to perform all over the mine, like the pumpers who walk from pump to pump. Where does their work begin and where does their pay commence?

A. They ride a man-trip. They get off the man-trip and start. That's their starting time and they go wherever they are needed, it's a give and take proposition, to a certain extent, with a pumper, he goes to a pump and sees that it is all right and he goes to the next pump and sees it is all right, and he goes to lunch at any time. He may sit down and watch a pump and eat while he is there. Ordinarily, a pumper never has a full day's work but it starts when he gets off the man-trip.

Q. 114. As I understand, men like the pumpers get off the man-trip and start their work at the nearest place at which they are to commence on that day?

A. Yes, sir.

[fol. 125] Q. 115. Now, a section such as you have described has a limited life in mining operations, doesn't it?

A. Yes, sir.

Q. 116. As you work out a section, you will set up another section somewhere else?

A. That's true. The life of a section generally runs around about two to two and a half years,—drives up and comes back on the retreat.

Q. 117. Does each section have its man-station and tool-house?

A. Yes, generally speaking, they have. They have a man-station, each section where the men ride a man-trip has a man-station. That might be a building, might be a breakthrough, but they have a certain place to get off the man-trip.

Q. 118. You refer to the tool house. What tools, generally, are kept in such tool houses?

A. The main line men have a tool house where they keep hammers and picks.

Q. 119. Are these for the loaders' tools?

A. No, the loader's tools are always kept in the working place unless they bring something to the shop to be repaired or exchanged or something like that. The coal loader's tools are kept in the working place and the company men's tools are kept in the tool house or in a certain place on the section.

Q. 120. If I understand you, both your coal loaders and your company men who work on the sections have certain places assigned to them where their work is done?

A. That's right.

Q. 121. And until they arrive at or in the immediate vicinity of that working place, the company requires nothing of them?

[fol. 126] A. That's true.

Q. 122. And they perform no work for the company?

A. No work for the company. They don't perform any work for the company.

Q. 123. As to the men who, you say, have roving duties or duties which carry them over the entire area of the mine, you say that their work begins when they start on whatever roving mission they may have?

A. Yes. However we haven't talked about all the different kinds of work. We haven't mentioned anything about our motormen.

Q. 124. A motorman is a company man?

A. Yes.

Q. 125. I had overlooked him. I wish you would explain his work to the Court and differentiate between the main line motorman and the gathering or section motorman?

A. We have twenty-seven motors at No. 1 Mine, and twenty-five or six at No. 2 Mine, and those are divided into section motors, which are six and eight tons, and haulage motors, which range anywhere from eight to twenty tons. Our haulage motors always had their starting time at the drift mouth and when they work the seven hours, their shift is over with, and their time ends at the driftmouth. That's what we have always paid for. The gathering motorman that doesn't haul a man-trip, his time starts on the section where he gets his mine cars. That's outlined in the Union contract.

Q. 126. Suppose one of the section motormen is directed or required to haul a man-trip from the outside or a load for the company, where does his work time commence?

A. His work time, if he starts from the outside, his work time would start from the outside.

[fol. 127] Q. 127. You also have brakemen who work along with the motormen on these trips, do you not?

A. Yes, we have brakemen who ride these trips with the motormen. However, if a man-trip is gong to a section and the main line motor is pulling that train of cars, we always have another motor that pushes or acts as a safety motor; in case something happens to the first one, the other is there to protect the men. We call that the tailing motor or pushing motor. These motormen are paid from

the time they enter the drift until they get to the section, and their starting time starts there and they are paid extra for the time required to push the man-trip in until they finish the shift.

Q. 128. Do you have brakemen assigned to work on sections and other brakemen assigned to work on the main lines?

A. Yes; yes, we do.

Q. 129. Those section brakemen, where does their work commence?

A. If a brakeman has any work to do going in, he is paid extra for it. In case he doesn't have any extra work to do, his starting time starts when that locomotive starts on that section. We have an agreement to that effect.

Q. 130. You mean if anything is required of him at any time before he arrives at the section or area where he is to perform his assigned duties, then he is paid for that?

A. Yes, sir, he is paid for that.

Q. 131. Suppose, by way of illustration, that a section brakeman is on a trip going from the portal back to the section in which his duties are ordinarily performed and he is asked to throw a switch, then where does his work for which he is paid commence?

A. In that case, it would start when he threw that switch. [fol. 128] If he is not asked to do any work, he rides that man-trip and his work doesn't start until he starts on that section when he receives his mine cars.

Q. 132. Is it so that as to those men who have jobs requiring their performance within a certain section or area, that nothing is required of them ordinarily until they arrive at that section or area?

A. That's true.

Q. 133. And if something is required of them before they arrive at that area, then their pay time or work week commences immediately upon something being required of them?

A. That is correct.

Q. 134. I don't believe we have said anything about the machine men, Mr. Hagy, the men who cut the coal. Perhaps Judge Barksdale is not familiar with the method of cutting. If you will explain that, it might help.

A. In a working face or working place, which, to us, means the same thing, a coal loader during the day will

sometimes clean up that place, he will get all the coal loaded out that's been shot or been cut, and he cleans it up and goes home at the end of the shift. That night, or after the fellow leaves, a machine crew comes in, which is composed of two men. They have a cutting machine, which has a cutter bar something like, say that it will cut to a depth of six or seven or eight feet, and that machine crew will come in and cut a kerf from one side of the place to the other.

Q. 135. What is that—the kerf?

A. Kerf,—you can cut anywhere you wish to, but we cut all of ours at the bottom. That is a cut all the way under that coal. The machine men go from place to place. They [fol. 129] have a list of the places that are cleaned up and they go in one and cut that place and go to the next place and cut it, and continue that way. They are paid so much a ton at piece work for the coal they cut. However, we have some sections where the men work by the day or the hour. We have some sections where maybe we don't have enough cutting to keep the men there all day.

Q. 136. This cutting or kerf is the cutting or space between the ground or lower rock and the coal above where the cutting has occurred?

A. Yes, sir.

Q. 137. About how deep into the face of the coal does the cutter bar extend?

A. The cutter bar cuts in the coal, where we have a loose, soft bottom, he cuts generally underneath the coal and cuts all the way across to a depth of about seven feet, and idea is when we bore the holes up in the coal and shoot it, we will have an open space for the coal to expand and not be shooting on the solid, gives it a chance to crumble up and break.

Q. 138. You say these machine men who do that work, the cutting, are ordinarily piece workers?

A. Yes, sir.

Q. 139. And are paid at a rate per ton for the coal they undercut?

A. That's right.

Q. 140. Do they have certain places at which to do that work?

A. Yes, the machine men all have certain places. They are assigned a section. Occasionally, one machine crew will cut for three locomotives.

Q. 141. And their machines are placed in the mine and left somewhere near where that cutting is to be done?

A. A machine man is on a contract basis. At the beginning of a shift, he gets a list of all places cleaned up, [fol. 130] all the places he has to cut, and he goes in and starts to cut the place that's the nearest where his machine is located. He never brings his machine to the shop; always leaves it on the section unless it is broken down and needs repairing. He always leaves it at a convenient place so he can start a shift that night if he is cutting for the day shift.

Q. 142. Is there any duty required of any kind of the machine man until he arrives at the place where — is to do his work?

A. No, there is no duty. A machine man generally rides a locomotive in and they use that locomotive to push the machine from place to place. However, some of the machines over at No. 2, for instance, are brought to the drift mouth, but when these are brought out, they always ride the machine. We have so many different kinds of machines and each is a problem within itself. We have a shortwall, which cuts on the bottom and drags itself across the face, and the low vein machine, which works on the same principle, and the arcwall machine, which propel themselves into the place and doesn't have to be unloaded off the truck, cuts directly across the face without unloading it.

Q. 143. Regardless of the type of machine or its immediate location, is there anything required of these machine operators until they arrive at the place where they are to do their assigned work?

A. No, no more than this: A man who runs a machine is like a man who runs a locomotive. He is supposed to do his sanding and such as that before he starts. The man who runs the machine sets his bits and oils his machine before he starts. That's in the contract.

Q. 144. I wish you would tell the Court the cycle of operation. Go through that, all the way through, and explain how you prepare a place to cut and load your coal.

A. The coal loader, who is a piece worker, cleans the cut, [fol. 131] loads out everything and makes preparation for the next day—I am talking about in the afternoon. When he gets that place ready for the machine, he leaves out, that completes that day's work. The machine man comes in and cuts that place some time during the time he is away,

and when he comes back the next morning he finds a fresh cut in his place.

Q. 145. You say it is a part of the duty of that loader to clean his place. Just what do you mean by cleaning?

A. He loads out all the loose coal, all the coal that has been shot, and all the brow that might want to fall itself.

Q. 146. By "brow," you mean overhanging rock?

A. Overhanging coal or rock, and makes it safe for the machine man to come in and cut, puts the timbers in place so it will be safe, and has the place ready for the machine man.

Q. 147. That's the coal loader who does all that?

A. Yes, sir.

Q. 148. How is he compensated for that?

A. That's all included in his loading rate.

Q. 149. He is paid a rate per ton for the coal he loads?

A. Yes, sir.

Q. 150. And all those things you mention are duties to be performed by him, incidental to his mining?

A. That's right. He timbers, tests the cut, bores the hole, and the loading rate takes care of that.

Q. 151. I believe he does get paid a yardage or additional amount over his loading rate for the rock he takes down and loads?

A. Yes, sir. Impurities or rock that a coal loader handles, he is paid on a yardage basis. That's a piece work system. This rock or sandy shale that's above the coal often comes with the coal.

[fol. 132] Q. 152. By "comes", you mean falls?

A. Falls or is pried down with a bar or he might have to take a wedge and wedge it down. The coal loader handles that and is paid so much per yard.

By the Court:

Q. 153. How is that yardage computed? Does somebody measure it?

A. Yes, sir, our engineers come along every two weeks and measure that and they make a calculation of how much he is due and he is paid on that basis.

By Mr. Richardson:

Q. 154. You mean the engineers measure the area from which the rock has been removed and pay him accordingly?

A. Yes, sir, they measure the area from where the rock has been taken.

Q. 155. I interrupted you awhile ago. After the coal loader has so prepared his place, then he is the only person who has a part in this operation?

A. The machine man comes in and cuts the place.

Q. 156. The machine man also is a piece worker?

A. Yes, sir.

Q. 157. And is paid at a rate per ton for the coal which he cuts?

A. That's correct.

Q. 158. You have referred to certain duties that he has to perform in maintaining or operating his machine and moving it from place to place, greasing it and sanding it. Are those things included in and paid for by the rate per ton allowed him for his services?

A. That's right. He is a piece worker, and he does the extra work like greasing the machine and setting the bits, and if he has to set a safety post to make a place safe, after [fol. 133] he starts cutting, he is supposed to do that, and he is paid for that in this overall piece work rate.

Q. 159. None of those things are considered extra work, are they?

A. No, no extra work.

Q. 160. They are all part of his duties?

A. All part of his duties.

Q. 161. And his duties are performed at the place where he has left his machine and is to use it?

A. That's right.

Q. 162. And he goes to his machine and starts to work and the company pays him by piece rate for the coal which he cuts from that time on?

A. That's right.

Q. 163. Proceed.

A. The next morning the coal loader goes in or the following shift, and finds the fresh cut. That means the machine man has come in and cut the place across to a depth of seven feet, and the coal loader examines the place first to see if it is safe, to see if he has any loose roof or any draw rock that has to be taken.

By the Court:

Q. 164. I thought you said he did that before he turned it over to the machine men.

A. He sets additional posts, the cutting machine extends back about six feet and he keeps these posts back enough to keep clear of that machine. After the machine cuts and goes out, the coal loader comes in in the morning and sets additional posts.

Q. 165. Isn't the vibration of the machine enough to loosen the roof?

A. No, sir, it has very little effect on it. He sets any additional posts required and gets the machine cuttings out from under this coal, out from under this kerf, and——

[fol. 134] By Mr. Richardson:

Q. 166. What does he do with the machine cuttings?

A. Over at Jewell Valley he loads them as coal. Over at Jewell Ridge, there is a strata of impurities at the bottom of the coal and that is generally loaded in the mine cars and hauled outside and put over the slate dump. That is not put through the tipple, is of no commercial value. However, on pillars, generally we don't cut on pillars where the stumps get down to a small block, but where they cut, they gob the machine cuttings.

Q. 167. In the Jewell Ridge Mine, you say because of the character of the coal, you do gob or throw away these machine cuttings?

A. That's right.

Q. 168. And the coal loader, as a part of his job, removes those machine cuttings from the place where he has to shoot down and load the coal and puts it to a place at one side where it is out of the way?

A. That's right.

Q. 169. And over at the Jewell Valley Mine, he loads these machine cuttings into a mine car and that is taken out and shipped, used commercially?

A. Yes, sir, and he is paid by the ton for that.

Q. 170. Is there a difference in rates for the two mines determined by the local contract for that local condition?

A. There is for yardage. The coal loading rate is the same in the two mines.

Q. 171. Proceed, if you please, with the operations.

A. He gets the machine cuttings out from under the coal and he bores his hole——

[fol. 135] By the Court:

Q. 172. What does he do that with?

A. He has a bug dust shovel with a long handle——

Q. 173. I mean what does he bore the hole with?

A. With an augur. It's soft coal, it doesn't take but a little bit to bore the hole.

Q. 174. Where is that put, the augur?

A. In the bottom, and he puts a hole on the right hand side and on the left hand side up near the roof and this one will shoot down the coal on the right hand side and this one the coal on the left hand side, and after he shoots, he goes back and tests the place to see if it has had any effect on the rock, and then he is ready to load coal.

Q. 175. How deep does that bring it down?

A. The depth of the machine, whatever it is.

At this point, a recess for the period of fifteen minutes was taken, after which the examination of this witness was resumed.

By Mr. Richardson:

Q. 176. Mr. Hagy, I believe you were explaining the cycle of operations and had come to the point where the miner or coal loader had shot down the coal and was prepared to load it into the mine cars. How are the mine cars, and by whom, brought to his loading place?

A. The mine cars are delivered or brought into the working place by the motormen and brakemen who haul on that section. They place the car in the man's place, and he loads it. While he is loading that car that locomotive goes to another section and places that man, and he will do that right around until he comes back again. Ordinarily, there will be around six to twenty places on each section where a locomotive places cars. He continues that and when this man gets a car loaded, along about the time he completes [fol. 136] that, he will come back with an empty, pull the load and put the empty in and go through that cycle the entire day until that loader gets through.

Q. 177. These cars are delivered on tracks?

A. Yes, sir.

Q. 178. Who lays the tracks to the working place?

A. The track is laid by the company track men, who are paid by the hour.

Q. 179. The track is laid by the company men right up to the face?

A. Yes, up within two or three feet of the coal, ordinarily.

Q. 180. And when that car is loaded, how is it disposed of?

A. When it is loaded?

Q. 181. Yes.

A. The motorman comes and gets it and takes it out and replaces that one with an empty.

Q. 182. Under whose supervision does the coal loader do his work?

A. He does his work almost directly under the section foreman on that section, who visits his place and tells him what he must do to make himself safe, the manner in which he shall load his coal, bore the holes, timber and everything that's incidental to the mining of the coal in that place.

Q. 183. And about how many places, ordinarily, does the section foreman have to supervise?

A. Ordinarily, a section foreman will have about twelve places on an average, from twelve to fourteen. It depends on the section, on the height of the coal and how far the places are apart. The section foreman generally goes through each place twice a day. Some times we have sections where a man will have too many places to cover twice [fol. 137] a day, but he will cover the ones where he thinks a man is safe at least once a day and go through the others twice or more. If he has a place he thinks is dangerous he might go to that place three times a day, but he is required by law to go at least once a day to each working place.

Q. 184. These company men who work on the section, the track layers and the section motorman and pumpers and electricians and other men who work on the section, are they also under the supervision of the same man?

A. Yes, they are also under the supervision of the section foreman.

Q. 185. Speaking relatively, is there close supervision over these men or do they have a great deal of opportunity to work independently without any immediate bossing?

A. They are largely independent, in a way. That's one reason why so many people like mining. That's my belief, and my experience has taught me that. If a foreman only goes in a place once a day, that fellow is working there all the time almost without any supervision directly over him and naturally, everybody has a tendency to want a minimum amount of direction, but that foreman is about the only man

who directs that coal loader or the company men what to do on that section.

Q. 186. And you say this boss or supervisor goes into the ordinary place once, possibly twice and occasionally three times a day?

A. Yes, and while he is in there, he will give instructions or directions that might be for maybe the third day. He will tell the coal loader "We will clear up that cut", or this cut, and turn a breakthrough.

Q. 187. Who keeps a record of the time worked by all these men?

A. The section foreman keeps all the time on that section. I mean the section work. Of course, all of the section main line track men, pumpers, wire men, the general mine foreman keeps their time.

[fol. 138] Q. 188. As to the piece workers, the coal loaders, how is a tally kept on the amount of loading they do?

A. The motorman helps the section foreman keep check on how many cars each man loads. At the end of the shift, the motorman will tell the section foreman how many cars a certain check number loaded and the section foreman has a slight tab on it, too. He might go in and say, "How many cars did you load today?", and the man will say three or four, and he will remember that, and as the coal goes to the tipple, each car is checked and the man who weighs the coal takes the check off and gives the man credit for that car of coal. At the tipple, you have two men who weigh the coal, one represents the company and one represents the Union, and between them they keep a record of all coal weights in the tipple. Each car is weighed separately.

Q. 189. You have a record, do you, of the cutting that was done by the machine man the night before?

A. Yes, it is handled practically the same way. That coal loader that checks that car, the number, of course, is located at the scale house. The section foreman will give that machine man credit for all the coal that a certain coal loader loaded on that number. For instance, if a machine man has fifty coal loaders loading on his section, these check numbers are turned in and that machine man gets credit for all the coal loaded by these fifty men.

By the Court:

Q. 190. Is there a record kept of the time the coal loader works?

A. Yes, sir.

Q. 191. But they are not paid by that?

A. Yes, they keep a record so he will be paid overtime, all over thirty-five or forty hours, whichever it is.

[fol. 139] Q. 192. What is that, time and a half.

A. Yes, sir, over a certain number of hours.

By Mr. Richardson:

Q. 193. That, I believe, is referred to in the contract as rate and a half for over time work?

A. Yes, sir, rate and a half is what it is, and not time and a half.

Q. 194. I am not sure that you explained to the Court that the coal loaders attach to the cars which they load the checks or tags bearing their respective numbers, and with those tags a record is kept of the number of cars loaded by each loader. Is that a fact?

A. That's a fact, yes.

Q. 195. Did you explain that?

A. Each coal loader is assigned a certain number and when he is assigned that certain number, that's his account number on our payroll. For instance, we have a ridge we call Smith Ridge, that's the name of the ridge, and nearly all the miners who live on that ridge are named Smith. We may have three or four Bill Smiths, and the idea is to have a check number so we will not get their names confused. They all have social security numbers too, but by having a check number, they go by it instead of their names, so each coal loader puts his check number on each car he loads.

Q. 1[illegible]. To begin with, he gets a metal disk before he goes in the mine?

A. Yes.

Q. 197. And attaches one of those disks to each car of coal he loads?

A. That's right. It's a little brass check with a hole in it and he can attach it to the mine car and the car goes to the tipple, and the man who weighs the coal takes that check off and gives him credit for the coal he had in that car.

[fol. 140] Q. 198. In the same way, credit is passed to the machine man who has undercut that particular coal?

A. Yes, credit goes to the machine man.

Q. 199. The section foreman keeping a record of whose coal is cut by the particular machine man?

A. Correct.

Q. 200. Summarizing these things, Mr. Hagy, where does the coal loader—to begin with, where is his usual working place?

A. The coal loader, about the only place he works is in his working place, the place where he loads his coal.

Q. 201. And the machine man's working place, as I understand, is where he cuts the coal?

A. That's right.

Q. 202. Where he has the machine parked to begin that cutting?

A. That's correct.

Q. 203. And the company man working on a section is on duty at the place in the section where his work is to be performed?

A. That's correct.

Q. 204. Where do these men begin their day's work?

A. The coal loader begins his day's work in his working place.

Q. 205. Where does the pay time for these men begin, according to the Company practice?

A. Begins in the working place when they start loading the first pound of coal or doing the first amount of dead work, or whatever connected with the work in that place.

Q. 206. Or for the company men, the first work performed when they arrive at their usual working place?

A. That's correct.

[fol. 141] Q. 207. And that's true as to all of them, their pay commences as soon as they arrive at the place where their work is to be performed?

A. That's correct.

Q. 208. And does this method of operation and of paying the men apply generally throughout the bituminous coal mining industry?

A. It has at all the mines I have been connected with and I feel that it is the same way everywhere for we have the same contract in the sections where I have been.

Q. 209. You have kept yourself familiarized with methods followed throughout the Appalachian area?

A. Yes, sir.

Q. 210. Does this same system which you have described here obtain throughout the bituminous coal mining industry, to the full extent of your acquaintance with it?

A. I feel that it does.

Q. 211. Mr. Hagy, I hand you a map entitled "Jewell Ridge Coal Corporation—Tazewell and Buchanan Counties, Virginia,—Jewell Ridge, Virginia", which shows mine workings in two general sections, and ask you what that map shows.

A. The map that we have here has many colored markings. That which is in red shows the location of the man-trips at both the No. 1 and the No. 2 Mine. That man-trip, of course, starts as shown there at the driftmouth or portal. We have there brown, as the location of the places visited by the parties, the attorneys that visited the mine, and the working places, and the part they visited is shown there in brown.

Q. 212. Did you take the attorneys for the defendants, these gentlemen here, and the attorneys for the plaintiff to the same places?

A. To the same places with the exception of one, that's in [fol. 142] Ten Right,—the attorneys for the coal company did not go in Ten Right in Parallel in No. 1 Mine. We went up part of the way to the mouth of it. Otherwise, the two parties visited the same places. In blue we have the name of the sections and also the name of the man-trip, and in green, we have the entrances to the two mines marked. In violet, we have the roads traveled by the miners who walk part of the way and catch the man-trips. At No. 1 Mine, we have quite a number of openings. The miners walk in these openings and catch the man trips and ride the remainder of the distance to the man-station on their section. Taking down in the left bottom corner, we have there the portal marked, the entrance to No. 1 Mine. We have, going off to the left, we have a mine number No. 4 Mine. That's some old pillar work in the section there just a little ways from the portal. Some men walk in there and some ride a man-trip from the lamp house. All other man-trips in No. 1 Mine follow that red line over to what we have marked "Dispatcher's Office" or "New Slate Dump". The Dispatcher's Office isn't marked on this map, but on some of them it is. There the man-trip divides and some go to the left and some go to the right, and we come to what we call Two North and one locomotive works down in there and a man-trip runs down as the red line shows. The end of the red line shows where the man-trip goes to, and in that straight line of entries called Bear Wallow Main the

man-trip goes down in there and the right hand Parallel commences. We have shown there where the man-trip ends. Two man-trips goes in Parallel Main Section, one goes up in Five Right, and the other into Ten Right, Eleven Right, Thirteen Right and Fourteen Right.

Q. 213. Have you the distances from the main entrance of that No. 1 Mine to the man-trip stations on these various sections which you have just now identified?

A. I have those distances as I have figured them. Those [fol. 143] distances are, this first left hand place just inside the drift, what we call No. 4 Mine, which is the shortest distance from the portal into that section, is 4250 feet. Those distances are scaled, I didn't measure them with a tape. I scaled them on the map.

Q. 214. What is the scale on this map?

A. One inch equals one thousand feet. You can see by the coordinate line, each coordinate line equals five thousand feet.

Q. 215. The map is correctly drawn on the scale of one inch to one thousand feet?

A. Yes, sir, very accurately drawn. This was taken off a larger scale map. The lower Middle Creek Section, coming through the first tunnel, there men walk down off the mountain and catch a man-trip there, and that distance is 6050 feet.

Q. 216. I hand you here a typewritten sheet entitled "Distance of Man-trip Stations from the Portal at Jewell Ridge Mine", and ask you if that was prepared under your supervision and if it shows the correct distances from the portal of this mine to the man-trip stations on the various sections.—Does that paper show what my question implies?

A. Yes. I was just checking it. Yes, sir, it's the same.

By Mr. Richardson: We should like to introduce this in evidence, if Your Honor please.

By the Court: Let it be introduced.

The paper referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 16", and is returned as a part of this transcript.

By Mr. Richardson: Before I go further, we should like to file this map in evidence.

By the Court: Is there any objection.

No objection being interposed, the map referred to was thereupon filed, marked as:
[fol. 144] "Plaintiff's Exhibit No. 17" and is returned as a part of this transcript.

Q. 217. Will you proceed to give those distances, Mr. Hagy?

A. Where is the map that has the distances on it?

By Mr. Stuart: I will get it.

A. All that I have said about distances has been the No. 1 Mine. The man-trip to No. 4 Mine, I mentioned that as being a distance of 4250 feet from the drift.

By Mr. Richardson:

Q. 218. The No. 4 Mine is a part of the Jewell Ridge Mine, is it not?

A. A part of the Jewell Ridge No. 1 Mine.

Q. 219. Accessible through the main entrance or portal to the Jewell Ridge Mine?

A. Yes, has an opening outside where some of the men walk in that do not ride the man-trips.

Q. 220. Will you indicate on this map the first place at which the main man-trip you have traced comes to the outside?

A. After having gone through?

Q. 221. Yes, after having gone through the mine on the inside.

A. Those who are following me on this map, the man-trip enters at the driftmouth, through the tunnel and follows the right hand line where you come to the outcrop, where it is marked in green, stating "Lower Middle Creek Drift". There the man-trip stops and picks up additional miners.

Q. 222. At that point that is marked "Lower Middle Creek Drift", the entry along which the man-trip is operated comes in to the open from under the hill; is that right?

A. That's right. It is a tunnel where it entered and this is the exit to the tunnel.

[fol. 145] Q. 223. And you say at that place there are other men who enter the mine?

A. There are other men catch the man-trip there, they do not enter the mine there, they catch the man-trip there and proceed on over towards the working places.

Q. 224. Is that place that you have referred to there accessible to any of these roads that you have referred to, either the paved county road or one of the unpaved roads?

A. Yes, it is. The road is up on top of the mountain and by walking down the hollow, as these men do, they catch the man-trip. These men who walk down there live up on top of the ridges, and rather than come over to the main entrance, they walk down there and catch the man-trip and ride on in to the man-station where they get off.

Q. 225. And that is permissible practice as to the employes who wish to follow that method of getting into the mine?

A. Anyone who wishes can follow that procedure. Some left their cars up there and walked down, left their automobile up on town—not very many, but some do.

Q. 226. Moving along, if you please, I wish you would go ahead and state the other distances, always giving the distance along this man-trip entry from the main portal of the mine.

A. A distance of 9850 feet is another drift or portal and there the man-trip stops and picks up men who live up on the ridge in that vicinity. There are several men who caught the various man-trips there and continue on to the working places before the beginning of the shift.

Q. 227. Let's see if I understand you correctly. This man-trip entry is first the tunnel from the main entrance to the mine, through the hill to a hollow where it emerges into the open and there you pick up certain men who enter that [fol. 146] way, and then it goes back under the hill again, that is to say, in a tunnel, and as I understand you, comes out at another place?

A. Yes, comes out at another place.

Q. 228. What is that other place it comes out?

A. It is several hundred feet to where it comes out but the next place where that man-trip stops is on the inside, where there is an opening that leads to the outside, that we call the Jones Fork Drift, and there men come down and have carbide lights and walk inside until they get to the main line. They only walk in a distance of about three hundred and fifty feet, and there they wait until the man-trip takes them to wherever they are going. That's another stop where the man-trip stops and picks up miners.

Q. 229. This place you have just now referred to is the point at the northern portion of the open section of this man-trip entry on Upper Middle Creek drift?

A. That's the one we were talking about before the last one. The Upper Middle Creek Drift is the second stop where we pick up miners. The third stop is Jones Fork Branch. That's where the men walk in about three hundred and fifty feet, something like that.

Q. 230. Both of these two points you have referred to, the Lower Middle Creek and the Upper Middle Creek Drift are in the same section of the open part of this man-trip entry?

A. As will be noted by the red line, that track is on the outside, it isn't under cover between Lower Middle Creek Drift and Upper Middle Creek Drift. That's not in coal. These other tunnels are in coal. This track is outside in the open.

Q. 231. This place at the Upper Middle Creek drift, this entry goes underground again?

A. Yes, sir.

[fol. 147] Q. 232. In the coal, as you put it?

A. Yes, sir.

Q. 233. Is that point accessible to other men in that neighborhood who work in this mine?

A. Yes, sir.

Q. 234. Do other men enter at that point?

A. Yes, sir, I have a record of who they are.

Q. 235. Proceed, following the entry line.

A. Following the red line there, leaving Jones Fork Branch,—do you want to dwell on that more,—we follow the red line until we come to a distance marked 15,280 feet. That's the dispatcher's office, and to the left we see a line leading out, stating "New Slate Dump". There is where some men walked down off the ridge and use carbide lights and walk into the dispatcher's office and catch man-trips going further in the mine, or towards the man-stations on each section, but at the dispatcher's office the man-trip divides, some go to the left and some to the right, depending on where the men work. These man-trips are made up outside. Each trip has a car next to the locomotive that is a tool car, and behind that they have the train of cars where the men get in, and it is made up outside so the trains of cars will go into the sections where the men work, and right at the dispatcher's office is where we make the first division of the man-trips.

Q. 236. Take the one that leads to the left and give the distance to the one marked "Gravel Branch".

A. That's 19,180 feet. That's the distance from there to the driftmouth where the man-trip starts. At that point, the men unload and walk the remainder of the distance to their working places down in Gravel Branch. That line that comes to the outside is where a fan is located and there are men who walk in there and all the way down to the working section and never catch a man-trip. To the left we [fol. 148] have another one marked, called Drainway Drift. We have men who walk in there and catch a man-trip and ride down to One North or Gravel Branch, and some work in another section there where we do not have a man-trip to. Further down on that section, we have One North, that man-trip goes 19,480 feet from the main drift. They get off there at the mouth of those entries that go to the left away from that red line and walk the remaining distance down to the working place. Are there any questions about that down in there?

Q. 237. Are there any openings to the North of First North through which men enter?

A. I just mentioned there before, we have the Gravel Branch Drift where men enter.

Q. 238. That's to the west, isn't it?

A. Nothing in the north, no. All these hatched black sections show where the coal has been extracted. That's all pillar work, so there is no way anyone can go that way to the outside.

Q. 239. Coming back to the dispatcher's office and following the right hand fork of the entry, trace it, please.

A. The first line leading off that right hand fork just mentioned is a distance of 17,980 feet. We call that the mouth of Two North Entry, and there a man-trip goes down to Two North Section and there where the man station is is 20,580 feet from the drift.

Q. 240. You say the man-station on Second North is 20,580 feet from the drift mouth?

A. From the drift mouth where the man-trip starts.

Q. 241. Is there not another place very close to the junction of the main entry and that one leading to Second North where the entry again comes into the open?

[fol. 149] A. Yes, as marked there "Bear Wallow Drift". There are two drifts. The track comes outside and goes a distance of about two hundred feet and goes inside again, two drifts, so you have an outside track there and that outside track is maybe two hundred or two hundred and fifty

feet, something like that, apart. There at that point, Bear Wallow Drift, we have men who work in that drift who come back to the man-station and catch a man-trip there and ride down into the Two North Section. There we have men walking towards the tipple a distance of several hundred feet.

Q. 242. What is the approximate distance that these men entering there and going to Two North would proceed on the man-trip?

A. That distance from Bear Wallow to the mouth of Two North where they would get on the trip would be the difference between 18,480 feet and 17,980 feet, that's a short walk, and they would ride from 17,980 feet down to 20,980 feet.

Q. 243. Now, from the Bear Wallow Drift Junction, the entry parts again, Follow the left hand branch of that and identify the sections and give the distances, please.

A. The one forking there to the left, follow those entries to Bear Wallow Mains,—we drove several entries parallel to each other, down to where the man-station is, 23,660 feet to the drift. Down on that section, however, back several hundred feet from where the man-station is, we see an opening outside. We have some men who enter there and do not ride the man-trip at all. They walk to the working place.

Q. 244. That's the extreme section on that branch of the entry?

A. Yes, sir.

Q. 245. Following the right hand fork, will you give the sections served by that entry up there and the distances from the main entrance?

A. Taking the right hand fork, we go through a tunnel. [fol. 150] That's a tunnel in the coal. If you will notice, on the right of those entries, it goes through a short spur of that hatched out section. The coal has all been extracted in there. This is a tunnel and it comes out again at what we call the Parallel Drift and there the man-trip stops and lets the men off who work up in this section to the right of that. There are two entries up in there that we call Three and Four Right, and the men walk to their places up in there. However, the remaining ones on the man-trip that work down in Parallel Mains remain on the trip and ride on down to Parallel Mains there. The first station there is 23,460 feet from where the man-trip starts and the next station is 24,060 feet from where the man-trip starts. That's down in

Parallel Mains. Off of that we have shown there Ten Right and Fourteen Right, showing where the party visited when they visited this Mine, and also the distances shown from the main drift to where they were approximately.

Q. 246. That is the section that is most distant from the main entrance?

A. That's the one most distant from the main entrance.

Q. 247. That's the place to which you took the gentlemen who came there representing the plaintiff and those representing the defendants alike?

A. That's correct. There are quite a number of men who work in this Parallel Drift, marked 20,960 feet. We have quite a number of men who come off the mountain and walk in there and walk all the way to the working places. We have some who may catch the man-trip and sometimes they walk. Going on through the hill, we have another place marked, called Indian Creek Drift. There the working entry cuts outside again and goes into another hill. It isn't advanced very far. There we have quite a number of men who walk off the hill and walk in and never ride a [fol. 151] man trip. They come down to the drift and use carbide lights and walk into the section and get their electric lights and never ride a man trip. It might be mentioned there, just inside that drift, this Parallel Drift is another man trip, a branch of the one that comes to that drift, a train of about six or seven cars goes on up and lets a few men out at what we call Six and Seven Right, and the remainder goes on to Five Right. That distance where they get out at Five Right is 23,680 feet, and up there is another place where men walk in and these men walk to their working places. That's at Five Right Fan. All this is No. 1 Mine.

Q. 248. Mr. Hagy, while you are testifying about the Jewell Ridge Mine and the number of men who enter at these various points, I wish you would turn to your records there and state how many employees, either coal loaders or company men, who work on the inside, enter the mine at places other than the main entrance to this Mine No. 1, and give the number who enter at each one of the respective places.

A. Would you like for me to give the numbers first? I have that in a notebook I have.—These numbers were taken from the section foremen, I asked the section foremen to give me the number of men who walk in.

Q. 249. Do you know those men?

A. I know most of them. Some I will not know, but most I do know. Some I know the check numbers and do not know the names. Others I know the men. Out of twelve or fifteen hundred men, you can't know the check number and name both, but I do have the check numbers given me and to the best of my knowledge, they are correct.

Q. 250. If you will please, give the number of men who enter at each one of those openings and say where those men go. Is it more convenient for you to do it another way?

A. No. Those that work in Bear Wallow drift and catch [fol. 152] the man trip at the mouth of Two North, that walk backward, as I mentioned, there are two of them that go to Two North.

By Mr. Rogers:

Q. 251. Two men that go in at Bear Wallow Drift?

A. Yes, sir. No, they walk in and go out to the mouth of Two North.

Q. 252. They come into the mine at Bear Wallow drift?

A. Yes, sir.

Q. 253. Two men?

A. Yes, sir. We have three that catch a man-trip there and go down to Bear Wallow.

Q. 254. So there is a total of five men who get in there?

A. Yes, sir. And we have one man who catches a man-trip at the upper end of Middle Creek and rides to Two North, and we have two men who go in at the upper end of Middle Creek and ride to Bear Wallow, and we have one man who catches a man trip at the lower end of Middle Creek and rides to Two North. We have three men who catch a man trip at the lower end of Middle Creek and ride to Bear Wallow. We have four men who get on at the same place, the lower end of Middle Creek, and ride to Parallel Mains. We have two others who get on there at the lower end of Middle Creek and ride to Gravel Branch Section and at the same place, we have eight that go to One North Drainway. Now, those that walk in at Jones Fork Branch and catch a man trip as it passes, we have five that go to One North and two that walk in at Jones Fork and catch a man trip that goes to the Parallel, Main Parallel. We have three that walk in there and go to One North Parallel, and two that walk in there and go to One North

Drainway.—All these were taken off the payroll. You wouldn't have that many all the time, but you have that many on the payroll that do that. Those that walk in to the dispatcher's office and catch a man trip and ride from there, [fol. 153] we have one that goes to One North. We have one that goes to One North Parallel. We have two that catch a mantrip outside of Bear Wallow Drift, on the outside of the drift, and ride to Bear Wallow.

Q. 255. Are they the two you mentioned? You mentioned two and later three.

A. I know what you have there. There might be an error in typing. Some of this has been erased. I would have to check my notes to check back on it. That one particular number, I would have to check back to see. We have two that catch the man trip outside of Bear Wallow Drift and go to Bear Wallow, and four that catch a man trip there and go to Parallel Mains. Those that walk in, I have one that walks in at Bear Wallow, comes up through where the fan is. We have seventeen that walk in the Parallel, never ride a man trip, and we have five that walk in Gravel Branch and do not ride a man trip, and we have three men that walk in the No. 4 Mine and do not ride a man trip. Those should total seventy-two men.

By Mr. Richardson:

Q. 256. Seventy-two men who enter the mine at places other than the main entrance or portal and move to places where they work in the manner you have described?

A. Yes, sir.

Witness stands aside.

And, thereupon, the hour of 5:00 o'clock P. M. having arrived, Court was adjourned until tomorrow, Thursday, the 18th day of November, 1943, at 9:30 o'clock A. M., at which time the trial of this case was resumed.

[fol. 154] By Mr. Richardson: If your Honor please, we have two witnesses here today upon whose time there are considerable demands if we would be permitted to, we would like to interrupt the testimony of Mr. Hagy and introduce these gentlemen.

By the Court: All right. Proceed with that.

CHARLES O'NEILL, another witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Richardson:

Q. 1. Your name, I believe, is Charles O'Neill?

A. That's correct.

Q. 2. Where do you live, Mr. O'Neill?

A. My home address is 69 Griffin Avenue, Scarsdale, New York. My business address is 420 Lexington Avenue, New York.

Q. 3. What is your business?

A. President of United Eastern Coal Sales Corporation, and director of a number of coal companies, and also President of Central Pennsylvania Coal Producers' Association, the District in which we operate the bulk of our mines.

Q. 4. What area does that Association include?

A. It includes about fifteen counties in the Central part of Pennsylvania and employs about fifty thousand men and produces about fifty million tons of coal a year.

Q. 5. How long have you been connected with the bituminous coal mining business?

A. I went to work in the mines in 1898, as a coal miner, [fol. 155] and I have been, except for a very short period, associated with the industry since that time.

Q. 6. Have you had some association with the making of wage agreements?

A. Yes, I have had some experience in that connection. I was at one time an officer of the United Mine Workers of America and participated in the scale committee, the wage making committee, for my first time in 1916, and I have been engaged on those committees since that time, except for a period when there was no Union relations in the District, lasting about three or four years.

Q. 7. Does your acquaintance with the proceedings in the wage negotiations between the operators and the employees extend back of 1916?

A. Well, as a member of the United Mine Workers and my employment by them in their office at Clearfield, Pennsylvania, I was quite familiar with the proceedings prior to that time, but was not a scale committeeman, as it was called, prior to 1916.

Q. 8. In 1916, what was the practical method of making the wage contracts between the employers and the Union in the bituminous coal mining industry of this country?

A. Prior to 1916, what is referred to and commonly termed the basic wage agreement was made by the Mine Workers and the operators in Western Pennsylvania, Ohio, Indiana and Illinois, and that contract, when made, became the basis for the contracts throughout the rest of the country.

Q. 9. Since that time, what arrangement has been followed?

A. Under the NIRA, a Code of Fair Competition was worked out between the United Mine Workers and the coal operators. That was a reestablishment of Union conditions in practically all of the Northern Districts and in the Southern Districts. The operators who made the first agreement [fol. 156] with the United Mine Workers, which then became substantially the wage provisions of the Code, were the operators from Pennsylvania, Ohio, Maryland, West Virginia, Eastern Kentucky and Southeastern Tennessee and the panhandle of Northern West Virginia, and what's commonly referred to as the Northern West Virginia-Fairmont District.

Q. 10. The NIRA Code applied generally throughout the entire bituminous coal mining industry of the country, did it?

A. Yes. When the first agreement was made, which was September 26, 1933, and became effective October 2, 1933, the Code carried with it the results of the wage agreement which I have just outlined, and which was known as the Appalachian Agreement, to the other Districts throughout the United States.

Q. 11. Mr. O'Neill, in stating the various sections which were included in this basic agreement just now, I am not sure that you included Virginia.

A. And Virginia was also a part of it.

Q. 12. Have you participated consistently in the Wage Conferences since 1916?

A. In all of the Central Pennsylvania Conferences from 1916 to 1933. Prior to 1933, Central Pennsylvania was what was called an outlying district. It was not a part of the Central Competitive Field which I have just described. Since 1933, I have participated in all of the Appalachian Conferences and have been a member of the Negotiating

Committee each year since that time, on each contract-making year since that time.

Q. 13. In 1916, what interest did you represent?

A. I was then secretary of the Central—'sixteen?

Q. 14. Yes, sir.

A. I was Vice-President of District No. 2, United Mine [fol. 157] Workers of America. That's Central Pennsylvania District.

Q. 15. By 1933, when the NIRA Code was adopted, whom did you represent?

A. I was Vice-President of Peel, Peacock & Kerr, and represented that coal producing and mining interest, they having a number of producing companies, about four or five producing coal companies.

Q. 16. So at that time, you were speaking for a group of employers?

A. That's right. I was also elected President of the Association that year and participated in that negotiation as President of this Association.

Q. 17. What Association?

A. Central Pennsylvania Coal Producers Association.

Q. 18. You have been President of that Association ever since 1933?

A. That's right.

Q. 19. You have been on the sub-committee of the Wage Conferences for determining the wage scales at subsequent wage conferences, have you?

A. I have been on the sub-committee in every conference since 1933.

By Col. Harris: I recall that your Honor yesterday expressed a desire to be informed of the historical background. With all deference to Your Honor's feeling in the matter, yet to preserve our position, we would like to have it understood that all objections, those we stated as to materiality and the detailed objections I interposed in my statement yesterday, be re-interposed to all questions dealing with all negotiations in which Mr. O'Neill participated; in other words, as we see it they are subject to the objections that we interposed on yesterday.

By the Court: Your objection will be noted and overruled and exception noted and it will be understood that that objection and exception goes to all the line of questioning as indicated by counsel, and need not be repeated for each question.

[fol. 158] Q. 20. What did that sub-committee do?

A. What the subcommittee does, is after the formal conference or public proceedings are suspended, meet with a similar committee of the United Mine Workers and in that council, try to work out the details of an agreement which may be reported back to the general conference, where it is ratified.

By the Court:

Q. 21. At what time are you referring to now?

A. In each case.

Q. 22. Since 1933?

A. Since 1933.

By Mr. Richardson:

Q. 23. So this sub-committee of which you were a member was the core of the Wage Conference?

A. That's right.

Q. 24. It was composed of a relatively few representatives from each side and they did the actual work of negotiating?

A. They did the actual work of negotiating and editing the agreement, which was presented to the general conference.

Q. 25. Mr. O'Neill, has the matter of hours of work been a subject of consideration at the Wage Conferences from time to time?

A. The hours of work and the wage rates themselves are the principal considerations of a Wage Conference.

Q. 26. That's the heart of the agreement?

A. That is the heart of the agreement.

Q. 27. In that consideration, I take it the Workers would contend for shorter hours and the employers would want more hours of work,—is that generally so?

[fol. 159] A. That is generally so. The Workers have always pressed for the shorter hours, and have generally been resisted by the employers.

Q. 28. There has been, has there not, a gradual shortening of the work-day in the bituminous coal mining industry through the period of your acquaintance with it?

A. The relationship of the United Mine Workers on hours begins a long way back. The eight hour day at the place of work was established first by the United Mine Workers and

Operators' contract on April 1, 1898. The eight hour day, as we call it, was changed on April 1, 1934, to a seven-hour day at the place of work.

Q. 29. Was that eight hour day at the time you mentioned established as a basic thing for the industry throughout the United States?

A. I would say, generally speaking, yes. There may have been some objections to that that I can't recall. In other words, you must recall this fact, in considering that, that the Union was not always as strong as it is today and may have had to compromise its position, but officially and generally, throughout the industry, it was an eight hour day.

Q. 30. What did that eight hour day mean?

A. It meant eight hours of actual work at the place of work. A man's time began when he reached the place of beginning his day's operation, above ground or below ground.

Q. 31. Did it include any of his travel time in getting to his place of work?

A. Well, it never included travel time as a matter of pay or as a matter of work. The work day began when he reached his face, if he was a miner, or if he was a locomotive runner, it began when he got to the passway where he picked up his locomotive. If he was a hoisting engineer, it began when he started to wind the cage.

[fol. 160] Q. 32. Was that universally recognized in the industry?

A. It was recognized universally in the industry in all wage contracts between the United Mine Workers and the coal operators, and so far as I know, was always recognized in those localities where there was no relation maintained between the Union and the company.

Q. 33. Did you ever know of any exception to that rule in the bituminous coal mining industry in this country?

A. I never knew of any exception in the bituminous coal mining industry in those parts of the industry where I am familiar. I never heard of any anywhere else.

Q. 34. Your work in the Association and in the Conferences has familiarized you with practices throughout the country in this industry, has it not?

A. I would say very generally with the practices in the bituminous coal industry east of the Mississippi River.

Q. 35. Mr. O'Neill, will you inform us whether it was mutually understood and recognized as between the em-

ployers and employes in the various conferences with which you have an acquaintance that the travel time in the mines or otherwise in getting to their working places was not work?

A. I never heard it referred to as work until now, until this present Wage Conference.

Q. 36. And in all the other Conferences and proceedings, was it mutually recognized as not being work?

A. Well, so far as I know, and so far as I can testify in my own behalf, it was never recognized as work. The compensation began when the man reached his place of work and actually began to perform his daily task.

[fol. 161] Q. 37. And stopped when he completed his daily task at his working place and didn't include the return time any more than the approaching time?

A. Yes, the starting time and quitting time was based upon beginning his task wherever it might be in the mine at seven o'clock in the morning, if that be the time, and ending seven hours later, excluding a thirty minute lunch period.

Q. 38. In the conference was there discussion of the travel time as a factor entering into the conditions of employment?

A. Well, in the old days the miners used to make a claim for bank to bank payment, which in the nomenclature of the industry has now been made portal to portal or collar to collar. These demands were not too frequent and I always considered them as a way of asking for a further wage increase and the practice of the industry was that when there was to be a change in wages, that the rates themselves at the place of work were all that was ever changed.

By Col. Harris: I assume, if the Court pleases, that rather than interrupt the witness as he goes along, any question of conclusions or opinions which he may intersperse in his testimony, that we may have a right to move to strike out at the end.

By the Court: You may.

A. Since 1933, I do not recall of any demand for pay for the time spent in traveling underground until the Mine Workers' demands were presented at the New York Conference this year, March 10th.

Q. 39. Do you remember any such demand since 1916?

A. I think the Mine Workers included that demand in their request for changes in 1919. That's my recollection of it.

Q. 40. What were the conditions existing at that time?

A. In 1919,—I don't know how to say it,—on November 1, 1917, a contract was negotiated between the United Mine [fol. 162] Workers and the operators, which was approved by the United States Fuel Administration for the duration of the war. During the war that contract was carried out and a question arose after the signing of the Armistice on November 11, 1918,—the Mine Workers believed that the war ended when the shooting stopped. The operators took the position that the war ended when the President issued a proclamation of peace. In November, 1919, the Miners held a convention in Cleveland, Ohio, and made some demands and said that the war was over and that they had a right to ask for a change in the wage agreement. That resulted in a strike beginning November 1, 1919, and finally resulted in negotiations between the Government and the Mine Workers, the appointment of a Commission by the President of the United States, after he had re-established the Fuel Administration, re-established the maximum prices that had been promulgated during the war by the Fuel Administration, and a temporary award of fourteen per cent increase in wages was granted the Mine Workers while a hearing would be conducted by the Bituminous Coal Commission appointed by President Woodrow Wilson.

Q. 41. At that Conference in 1919, did the Union present comprehensive demands including its accumulation of all demands not theretofore stated?

A. The Union presented very comprehensive demands, including—I have forgotten the figure, a demand for increase in wages, a six-hour day, bank to bank, and many other changes in working conditions.

Q. 42. Can you say whether there was any insistence in that conference upon the payment of wages on a bank to bank basis, as affecting a departure from the established face to face basis of pay?

A. My recollection of the hearings that were conducted by the Coal Commission was that the pressure and emphasis made by the Union was for an increase in wages, which [fol. 163] they felt that the prices and the profits and the post-war inflationary boom which was then beginning to

present itself justified. I do not remember any particular emphasis on the bank to bank proposal.

Q. 43. Do you remember whether there has been any demand by the Union at any time since 1919 for the bank to bank or portal to portal pay?

A. I do not.

Q. 44. Were there, to say it otherwise, any travel time demands at any time between 1919 and 1943?

A. Not within my recollection.

Q. 45. You have been closely in touch with the Conferences and proceedings throughout that period?

A. I have,—except this time.

Q. 46. Yes, I understood you excepted 1943 when you said there were certain demands made. Did you participate, Mr. O'Neill, in the hearings before the National Industrial Recovery Administration, looking to the promulgation of a General Code of Fair Competition for the Bituminous Coal Mining Industry?

A. Yes. I was at those hearings, so far as the Bituminous Coal Industry was concerned, and participated as a witness.

Q. 47. That was in 1933?

A. Nineteen and thirty-three and 'thirty-four.

Q. 48. The general code hearings were had first in the summer of 1933, were they not?

A. That's right.

Q. 49. Do you know whether the United Mine Workers, as an organization, was represented in those hearings?

A. Yes, they were very well represented in those hearings, and very actively participated in them.

[fol. 164] Q. 50. You say that you testified. Who testified in behalf of the Mine Workers?

A. The principal witness, of course, was Mr. John L. Lewis, president of the Union.

Q. 51. Have you known Mr. Lewis for some time?

A. I think I first met Mr. Lewis in 1911.

Q. 52. And you have known him ever since that time?

A. Oh, yes.

Q. 53. Did you hear his testimony on that occasion?

A. Yes, I was present when Mr. Lewis testified.

Q. 54. Was the matter of hours of work an important consideration in that hearing?

A. Yes, it was a very important question in that hearing. I might say that my recollection is that since 1919 the

United Mine Workers have persistently had as one of their aspirations and demands a six-hour day.

Q. 55. Is that a six-hour day at the face, or how?

A. Well, that's my understanding that it was at the face. They never asked for bank to bank. It was a six hour day on the same basis as we had had an eight-hour day.

Q. 56. Go ahead, please.

A. Well, as a result of the hearings on the Code and the negotiations that were contemporaneous with the making of the Code, an Agreement was reached, by the sub-committee, and later ratified by the various districts and the General Conference, for the re-establishment of the eight-hour day at the place of work, and for the first time, limiting the work time in the week to five days.

[fol. 165] Q. 57. Mr. O'Neill, I interrupt you. You said that for years, perhaps since 1919, one of the aspirations of the United Mine Workers had been a six hour day?

A. That's right.

Q. 58. I interrupted you to define that six-hour day, which you did as six hours at the face?

A. That's right.

Q. 59. In the Code hearings before the NRA Administration, were those aspirations expressed in behalf of the Union?

A. Yes.

Q. 60. What, if you please, was the position taken by the Union in respect to the hours of work?

A. The position taken by the Union in respect to the hours of work was that it was to be actual work at place of work.

Q. 61. And was to be a six hour day?

A. And was to be a six-hour day. That was their request.

Q. 62. Was their contention made before the NIRA for shifting from the face to face to the bank to bank basis of computing work time?

A. No there was not.

Q. 63. Now, there was approved and promulgated a general Code for the industry coming out of this hearing we have just discussed?

A. That's correct.

Q. 64. That Code prohibited employment, speaking generally, for more than eight hours a day or forty hours a week, I think?

A. That is correct, I think, except for emergencies and accidents. A man might be employed a longer time and paid time and a half where they worked more than eight hours.

Q. 65. Did that prohibition in excess of eight hours a day or forty hours a week take into account the travel time in [fol. 166] the mines?

A. It took into account all time and there was no time limit in it. It was straight eight hours of work at the place of work, five days a week.

Q. 66. If a man working in the mine actually worked eight hours a day or forty hours in a week, and in addition to that, spent time coming to and leaving his place of work in the mine, that was still permitted and within the NRA Code, as you understood it?

A. That's right.

Q. 67. And was that understanding the basis upon which the industry operated?

A. That's right. I might make one correction in my stat-ment. The prohibition as to work over eight hours a day or forty hours a week except in cases of accidents and emergencies, there was no time and a half or rate and a half requirement in that contract for such work. That was paid as straight time.

Q. 68. Did the Union, through Mr. Lewis, or otherwise, continue, after the promulgation of this NRA code, to urge its six hour a day program?

A. I think they have asked for the six hour day in every proposal since that time. I know they made it again in 1934. I think generally they have made it every time.

Q. 69. What was the reason assigned for urging the six hour day in 1933 and 1934.

A. Well, generally, the arguments advanced in 1933 and 1934, was the one in line with what you might call public policy or National policy, to divide the work. We were just coming through a terrible depression and there was a general propaganda and encouragement by Government for [fol. 167] every one to divide employment as far as practical. That was one of the reasons advanced by the Mine Workers to shorten the work day and increase the number of men who might be employed. On that theory, we did restrict the work day to five days a week at that time.

Q. 70. Mr. O'Neill, do you know whether it is a fact that Mr. Lewis in behalf of the United Mine Workers, filed a

brief of argument in support of his position taken before the NIRA at the general code hearings?

A. I just don't recall the brief. Everybody did file briefs. I don't know—I can't recall his brief. Undoubtedly he did, but I don't know.

By Mr. Richardson: Because it is at an appropriate moment, if your Honor please, we wish to tender and ask leave to file a copy of a brief which was filed by Mr. Lewis, supporting the general Code. This has been checked by the gentlemen of the opposition as to its authenticity.

By the Court: Do you wish to make the same objection you made to the other documents, or have you anything else to add to it?

By Col. Harris: I think all those objections we put in yesterday would probably be sufficient.

By the Court: I should think so. The document will be admitted upon the same conditions the documents were admitted on yesterday.

By Mr. Rogers: My information is Mr. Lewis never filed any brief. This purports to be a summary of the statements made by Mr. Lewis generally, and we have no objection to its going in under the same objections and conditions, but to keep it clear we make this statement.

By Mr. Richardson: My authority for using the term "brief" and ascribing it to Mr. Lewis was the United Mine Workers Journal, from which I took as photostatic sheets the copy which has been introduced.

The document referred to was thereupon filed, marked as: [fol. 168] "Plaintiff's Exhibit No. 18", and is returned as a part of this transcript.

Q. 71. At the 1934 conference, you say the Union again urged its six hour day program?

A. That is right.

Q. 72. I wish to inquire if at that time it urged any shift from the face to face basis of pay?

A. It did not.

Q. 73. So again the six hour day for which contention was made was six hours at the usual working place?

A. That's right.

Q. 74. Exclusive of all travel time going and coming?

A. That's right.

Q. 75. The result of the 1934 Conference was to shorten the basic working day, was it not?

A. That is correct. It was changed from eight hours at the place of work to seven hours at the place of work, and thirty-five hours a week instead of forty hours a week.

Q. 76. That has been basic throughout the industry since that time?

A. That is correct except as to the modification of the agreement made, generally speaking, last February, at the request of the Department of the Interior, to provide for a six day work week at time and a half and rate and a half, which is now in effect.

Q. 77. Was that to permit the war time excessive demands for additional fuel?

A. That's right.

Q. 78. That time and a half and rate and a half pay to which you have referred applied to all time worked in production above seven hours a day or thirty-five hours a week? [fol. 169] A. That is correct.

Q. 79. But that had nothing at all to do with the travel time, as such?

A. No.

Q. 80. Did you participate in the hearings before the Senate or the Congress on the Wage and Hour or Fair Labor Standards Act?

A. No, I didn't testify in the Fair Labor Standards Act hearings.

Q. 81. After that Act was passed, did you recognize any similarity between Section 7 of that Act and the hours of work provision of the NIRA Code?

A. Well, I think, as I recall them, they were about substantially the same thing. I don't remember the exact language of them, but my recollection is that the provision for limitation of hours and weekly work was substantially the same in the NIRA Code as it was in the Fair Labor Standards Act.

Q. 82. Except that in the Fair Labor Standards Act, as you pointed out a while ago, there was added the provision for penalty wage at one and a half times the rate if the prohibition against employment should be violated?

A. That's right.

Q. 83. When did you first hear of any question as to the application of Section 7 of the Wage and Hour Act to the travel time question?

A. Well, the first time I heard of it directly was in the early part of January, 1940, or the latter part of December,

1939, I can't definitely fix that time. However, that's simply because I didn't have time to check it. But at that time an investigator by the name of Ashmede, from the Regional Office of the Wage and Hour Administration, located at [fol. 170] Pittsburgh, appeared at the Revloc Shaft of the Monroe Coal Mining Company, located at Revloc, Cambria County, Pennsylvania,——

Q. 84. Is that in the Central Pennsylvania Field?

A. That's in the Central Pennsylvania Field, and I am a director of the Monroe Coal Mining Company. This investigator began an investigation of the various items covered by the Fair Labor Standards Act, such as the situation as to handicapped employes, the situation as to deductions, so that the minimum wage,—to see whether the minimum wage was or was not being paid, as to whether or not the overtime provisions of the Fair Labor Standards Act were being complied with, and also included in his investigation travel time to the shaft. That was the first notice we had of any question about travel time, or that I had directly, of travel time under the Fair Labor Standards Act.

Q. 85. What word came to you out of that investigation?

A. The word that came to us out of the investigation was, first, that a consent decree in the Cornucopia Gold Mining Company case had indicated the necessity for change of policy by the Wage and Hour Administration and the minor corrections that were discovered by this auditor were settled on the ground as to people whom he found had not received all the overtime, of which there were a few, that the Act provided they should have. In all other respects, he found the company's application of the law to be correct, except that he continued his investigation of travel time and made quite an exhaustive report to his superior, a Mr. Calfee, who was Supervising Inspector, I think, of that office, in which he discussed at length travel time, and stated in his opinion that travel should not be applied in the mining industry and that the face to face basis of payment was a proper one. That report was made about the 14th of February, 1940. In his study of travel time, he indicated that if it were applied to that mine, as they sup- [fol. 171] posed the Cornucopia Gold Mining Company decision affected travel time, that the company then owed a very substantial sum of money.

Q. 86. Do you remember about what?

A. Well, I think he figured on his basis of calculation at that time that the amount of money would be in the neighborhood of $70,000.00.

Q. 87. You mean owed that to its employes?

A. Owed that to its employes, if this interpretation was placed upon travel time for coal miners.

Q. 88. And that was for the travel time accumulated since October 24, 1938, down to this period in February, 1940?

A. Yes, and was based, of course, in the first year on a forty-four hour week and the second year on a forty-two hour week, and the forty hour week had just begun, so the accumulation would be much more rapid from that time forward, if that interpretation had been insisted upon.

Q. 89. Do you remember how many employes there were at that time?

A. Twelve hundred, and about nine hundred and eighty under ground; quite a large mine and produced something over a million tons a year. When this report was made known to the Company, of course we decided maybe we had better look into the matter somewhat. Mr. Cowan, who is Vice-President in charge of operations of that Company, called me up and we went over this report and decided we ought to do something about it. We made,— Mr. Cowan made a number of trips to Mr. Calfee, and I finally decided I ought to go and talk to the United Mine Workers about it. I talked to Mr. John L. Lewis some time after this report came out, I would say probably around March 1st, brought it to his attention.

Q. 90. Nineteen and forty?

A. Nineteen and forty. Of course he was rather noncommital and I think rather surprised that the question [fol. 172] could arise in that fashion. We contacted the Philadelphia Office of the Wage and Hour Division, which office is superior to the Pittsburgh office, the Pittsburgh office is a branch of the Philadelphia Regional office——

Q. 91. When you say "we" contacted, whom do you mean?

A. Mr. Cowan, of the Monroe Coal Mining Company,— we got Mr. Gallagher, who was the counsel for the Regional Supervisor, the head of that office, Mr. Dorsey, and he wrote a report in which he confirmed that face to face time was the proper one in the mining industry. We still

were unable to get a closing of the Monroe Coal Mining company case. I again called Mr. Lewis on the telephone, I don't know the date of that, and he referred me to Mr. Lee Pressman,—Mr. Pressman was at that time General Counsel of the CIO, and Mr. Lewis was then, I think, President of the CIO, and Mr. Pressman's office was at that time, I believe in the United Mine Worker's Building. However, I called Mr. Pressman and told him about these reports, but still we did not have this case closed. He said that he would take the matter up with the Wage and Hour Division. On March 15th, he called me by telephone and told me that we should call on a Mr. Mertha, who was a lawyer in the Wage and Hour Division. Mr. Cowan and I called on Mr. Mertha and had a conference with him and felt very much dissatisfied with the results of the conference with Mr. Mertha.

Q. 82. That was in Washington?

A. That's right, at the main office of the Wage and Hour Division. I reported to Mr. Pressman that we were very much dissatisfied with the attitude of the Wage and Hour Division. Nothing happened, and Mr. Cowan came back down to the United Mine Workers' office and we were referred then to Mr. Earl S. Houck. Mr. Houck was the Director of the Legal Department of the United Mine Workers. Mr. Houck accompanied Mr. Cowan and I to the Wage and Hour Division. We met Mr. Mertha and Mr. [fol. 173] Wiseman, another attorney in the Department, and went over this whole thing, and we generally insisted that the contract between the United Mine Workers of America and the Operators was a contract that had the right to be complied with and not disturbed. We waited for some time and still the Monroe case was not closed, but on the occasion of the visit with Mr. Houck, there was an implication, at least, that the case would be closed up in accordance with the contract.

Q. 93. That implication coming from whom?

A. Mr. Mertha and Mr. Wiseman, the two attorneys for the Wage and Hour Division. We went home and waited for some time, and in the middle of June, the case was not closed, and Mr. J. D. A. Morrow, who was President of the Pittsburgh Coal Company at that time, called me on the telephone and told me that this matter had again come out front in Pittsburgh and that investigators were calling

at certain mines out there, and that a delegation of Western Pennsylvania coal operators had called at the Philadelphia Office and they came away with the distinct impression that there would be forthcoming from that Regional Office a finding that travel time should be paid for under the Wage and Hour Act, and I said, "Well, what can we do about it, we haven't got our case closed?", and he said we ought to reassemble the Appalachian Conference, or at least get a representative group of the operators from the Appalachian Conference to go to Washington and see whether or not we could get the United Mine Workers and ourselves in strong enough position to compel attention at the Wage and Hour Division. I agreed that we ought to do that. I tried to make an appointment with the United Mine Workers, and at this time it seemed that Mr. Houck was more or less representing the Union in this matter, and I think he was in Kentucky, I had a telegram from him down there, and he said he couldn't be back until a certain date. We arranged to call at the United [fol. 174] Mine Worker office on this date, which was about the latter part of June or the first of July, 1940.

Q. 94. Who were "we"?

A. The operators who were present were Mr. J. D. A. Morrow, Mr. Cowan, Vice-President of the Monroe Coal Mining Company, and myself. We met in Mr. Lewis' office and there were present Mr. Lewis, Mr. Houck, Mr. Willie Hopkins, who had then just been appointed at that time as General Counsel for the United Mine Workers, and I think Mr. Van Bittner was there, and several other people whose names I do not now recall. We discussed this thing for probably an hour before Mr. Lewis had to leave for a train, and he said he was going to leave the matter in the hands of Mr. Houck and Mr. Hopkins, and said we ought to go down and see Mr. Mertha and Wiseman again. I think it was Mr. Morrow who said that he was tired working with the underlings, and this thing had to go to General Fleming, then Colonel Fleming, who was then head of the Administration, if we were going to get any action on it. Mr. Lewis suggested that we make an appointment with Co-. Fleming, and we said we didn't know Col. Fleming. My recollection is that Mr. Lewis made the appointment for us himself, and we departed and went to Col. Fleming's office at the appointed time. My recol-

lection is we left the United Mine Workers office almost immediately and went to Col. Fleming's office.

Q. 95. Who was in that group?

A. Mr. Morrow, Mr. Cowan, Mr. Hopkins, Mr. Houck and myself. We had an interview with Col. Fleming and he indicated that if in this long period of collective bargaining in the mining industry that that was the basis upon which payment for work was agreed on, that there wasn't any reason why he should wish to disturb it. He said that he felt that a bona fide arrangement of that kind [fol. 175] of history of fifty years, certainly ought not be disturbed, particularly after the description we had given him of the disturbance that would be occasioned in the industry by any such revolutionary change in its wage structure. He referred us to an attorney for the Wage and Hour Division at Philadelphia, Mr. W. R. Gallagher, who wrote the memorandum about February 24th, and said that we should go over there and make a statement of policy as to what was involved in this matter,——

Q. 96. A statement of policy or of fact?

A. A statement of fact that could be the basis of the policy for the administration of the Act in the bituminous coal industry. Mr. Cowan and I left that conference and went to Philadelphia. We went to the Wage and Hour Division and met Mr. Gallagher and Mr. Dorsey. We arranged for a conference of the operators and the United Mine Workers on July 9th.

Q. 97. I don't believe I know who Mr. Dorsey was.

A. Mr. Dorsey was the Administrator of the Office of the Wage and Hour Division in Philadelphia. He was the chief officer of the Government in that Office.

Q. 98. And Mr. Gallagher was his counsel?

A. Was his counsel. We arranged to meet in Philadelphia at our offices, 1617 Pennsylvania Boulevard, on July 9th. In order to have a representative group of the operators present, I arranged to have the Negotiating Committee of that Conference present.

Q. 99. What conference?

A. The Appalachian Conference, plus the Chairman of the Appalachian Conference.

Q. 100. You mean the group of operators who had constituted the sub-committee of the Conference at the 1939 Wage Conference?

A. At the 1939 Wage Conference. That comprised Mr. [fol. 176] Walter Robinson, who was the president of the Youghiogheny and Ohio Coal Company, and was Chairman of that Conference, who has since passed away. It was—the Committee was Mr. L. T. Putnam, of Beckley, West Virginia, Mr. L. C. Gunter of Knoxville, Tennessee, Mr. J. D. A. Morrow of the Pittsburgh Coal Company, and myself. Mr. Earl S. Houck came to the conference for the United Mine Workers of America. We called at the Wage and Hour Division, had a conference with Mr. Dorsey and Mr. Gallagher, and they suggested that each of us go back and write a letter, in which the facts surrounding the payment for work time in the mining industry would be presented clearly to the Administration. We suggested that if that was the case, that we write a joint letter, and would a joint letter serve the purpose better. They said, of course, if you can agree on a joint letter, it will serve the purpose much better. We then returned to our office and composed a letter, at which composition there was present the committee of operators I have just named, Mr. Houck for the United Mine Workers of America, Mr. Fred Knight, the attorney for the Monroe Coal Mining Company, from Morgan, Bockius and Lewis' office at Philadelphia, Mr. C. E. Cowan, the vice-president of the Monroe Coal Mining Company; and after we had composed our first draft of this letter we asked Mr. Gallagher to come over and examine the letter to see if it covered all the points that he thought ought to be in such a letter. Mr. Gallagher came over and spent some time with us, suggested some changes in the composition of the letter, which were agreed to, after which time the letter was completed, all of us signing the letter, and it was delivered to the Wage and Hour Division the next morning by Mr. Knight, copies being sent to,—a signed copy being sent to Mr. Houck, a signed copy being sent to Mr. Walter L. Robinson, who was Chairman of the Appalachian Conference, and copies furnished to Mr. Morrow, Mr. Putnam, Mr. Gunter and myself.

[fol. 177] Q. 101. When you said all of us signed, you meant just the Scale Committee and Mr. Houck.

A. That's right, representatives of the miners and operators signed.

Q. 102. Mr. O'Neill, I hand you a copy, which, if Your Honor please, has been submitted to counsel and authenti-

cated, of a letter, and ask you if that is a copy of the letter which was composed and signed, as you have just stated.

At this point, a recess for the period of fifteen minutes was taken, after which the examination of this witness was resumed.

Q. 103. I had just handed you a letter, Mr. O'Neill.

A. This is a copy of the letter that we composed and submitted to the Wage and Hour Administration in Philadelphia on July 9th, 1940.

By Mr. Richardson: We wish now to file this letter as an exhibit.

By the Court: Over the same objection the letter may be admitted in evidence upon the same conditions as previous documents.

The letter referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 19," and is returned as a part of this transcript.

Q. 104. Mr. O'Neill, did that letter express the concensus of that group?

A. It was the act of the entire group and they all signed it, the people who were there representing the Appalachian coal operators and the United Mine Workers.

Q. 105. And did it also reflect the concensus of the group which you referred to in Mr. Lewis' office just before the appointment was made with Col. Fleming?

[fol. 178] A. I would say that it did. In other words, I can say in fairness that the United Mine Workers took the same position on this matter throughout as the operators did.

Q. 106. That letter was in response to the suggestion, I believe you have stated, that you gentlemen together give a statement of facts around which a policy might be formed. This is essentially a statement of fact, is it not?

A. That's right. That's what it is.

Q. 107. Were those facts within the knowledge of yourself and the other persons subscribing the letter.

A. I am quite sure of that.

Q. 108. And the facts stated were accurately stated?

A. That's right.

Q. 109. Would you subscribe to the same statements today?

A. I would.

Q. 110. Nothing in the subsequent experience has persuaded you that any of you were at all in error in your statements included in that letter?

A. As to the statements contained in that letter, as to results that might follow from the application of payment for travel time on the basis of the demands made by the United Mine Workers of America at New York, and which amounted to $2.25 per day on the basis of ninety minutes of travel time, the facts stated in that letter would be just what is stated there, would produce industrial chaos in this industry and even on the proposition presented by the War Labor Board, implemented by the Ickes-Lewis Agreement, which has been put into effect at many mines throughout the country now,—in fact is supposed to be in effect at all mines now,—the confusion resulting from the application of an assumed forty-five minutes travel time fixed by the War Labor Board in its recent decision in the case of the Illinois Coal Operators Association and the [fol. 179] United Mine Workers of America Agreement, this confusion has already given evidence at mines by a misunderstanding, by the changes being made in the wage structure. For instance, a locomotive runner with a basic pay of $7.00, transports men from the outside to the inside and then transports them from the inside back outside in the evening, at a mine where his extra work was one hour and a half for these two man-trips, morning and evening, received under the old wage scale eight hours and a half at time and a half for the last hour and a half, which gave him about $9.25 a day. Under this rule of travel time, this man who is running the man-trip locomotive receives $8.50 for eight hours and forty-five minutes, and has received a reduction in wages while he is transporting other locomotive runners to the inside of the mine, who are paid for traveling with him. That's one confusion that has already arisen in the mines, and several local strikes have occurred by the refusal of the man-trip locomotive runner to carry, take this trip, because he figures he is not entitled to a reduction in wages when everybody else in the mine is getting an increase in wages. There is already evidence of what we stated in the letter, that the entire competitive situation between mines and between districts is being radically changed. A mine that has a fifteen minute travel time, under this agreement, is supposed to get eight hours and

thirty minutes work time at the face. A mine that has an hour and forty-five minutes travel time will only get seven hours productive time at the face, the forty-five minutes being merely a method of computation, but the underground time is fixed at nine hours, including a fifteen minute lunch period, and the longer the travel time is, as stated in this letter, the less productive time is going to be gotten for the same pay at the face. This will radically change the conditions of cost of production between long travel time mines and short travel time mines, and under the stress of competitive conditions, is bound to result in complete [fol. 180] chaos as to the ability of these neighboring mines to compete with each other. This wage scale has been predicated throughout the years upon the basis of trying to preserve—(1) a reasonably competitive condition as between mines within districts, and (2), to give the same amount of work opportunity for earning to the mine workers themselves, so in the exercise of the day's work they would get the same yield of production as the miner in the next mine from them. The confusion that is going to result from overtime on hours in excess of forty at half rate pay as compared with miners at full time rate and time and a half for his excess work over forty hours is going to become very, very bad. The next thing this wage scale has been predicated on, as I know it, is a disposition and a policy up to this time, on the part of the United Mine Workers, to bring about, as nearly as possible, taking into consideration differences in natural conditions and locations and all that, a uniformity of wage schedules. In fact, the 1941 Conference divided the operators in the north and south on that one issue, that the differential in the basic day rates between the north and the south should be eliminated, and they should be paid the same wage in the south as in the north for the same task performed. This condition that we are getting into here now is going to change the relationship between mines, between districts, and the whole competitive situation that we have had in this industry for fifty years is being revolutionized by this thing called portal to portal pay, and it is being done, in my opinion, without consideration of its consequences at all, or perhaps, may I say with a recklessness that shouldn't be in an industry like this at a time like this. I think that every statement contained in the letter will be proven to be correct, under the War Labor Board's decision, in a

very short time. I think the industry and the United Mine Workers will, as competitive conditions return, have to back away from this portal to portal thing in order to insure the [fol. 181] maintenance of competition between operators and to insure maintenance of work for their own people. That's just my opinion, but that's what I think.

Q. 111. What do you think would be the effect that you have just described upon the opportunities of the men themselves within the mines to enjoy equal opportunity for earning?

A. Well, that depends upon the schedule itself and the application of portal to portal payment. Portal to portal payment is a working condition and for travel time, as such, could within reasonable limitations perhaps equalize earnings. Travel time as required by the Fair Labor Standards Act, and particularly on an assumed forty-five minutes travel time, is going to bring about wide differentials in earnings of mine workers.

Q. 112. You mean travel time if required by the Wage and Hour Act?

A. Yes.

Q. 113. To illustrate that, the piece workers in a mine having long travel time would have less opportunity for productive work, and therefore, would have less earnings?

A. Less opportunity for productive work and earnings on full time rate as compared with rate and a half after forty hours.

Q. 114. Was a reply to this letter which you have described and introduced in evidence received from Col. Fleming?

A. Yes, there was a reply received. I think the reply was dated July 18th, 1940.

Q. 115. I hand you, Mr. O'Neill, a copy of a letter dated July 18th, 1940, addressed to Earl E. Houck, Esq., and signed by Philip B. Fleming, Administrator, and ask you if that is a copy of the reply?

A. This is a copy of the reply received from Col. Fleming.

By Mr. Richardson: We wish to file this as Exhibit No. 20.

[fol. 182] By the Court: Let the document be admitted over the same objection upon the same conditions.

The letter referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 20", and is returned as a part of this transcript.

Q. 116. What became of the Monroe Mining Company case following the dispatch of this letter and receipt of this answer?

A. After the receipt of this letter, Monroe Coal Company was advised through Mr. Gallagher that they had formally closed the Monroe Coal Mining Company case in accordance with this policy of the administration.

Q. 117. Mr. Gallagher was speaking for the Wage and Hour Division?

A. He was its counsel.

Q. 118. And I believe you said you are a director of the Monroe Coal Mining Company?

A. That's right.

Q. 119. You referred a moment ago, Mr. O'Neill, to present confusion. You had in mind and referred, did you not, to the confusion consequent to the agreement that was made November 3, 1943?

A. That confusion is made up of two things. In the first place, you must understand that the Coal Mines Administrator, Secretary Ickes, has not yet or had not until last night put the regulations for the computation of the elements that are contained in the War Labor Board's decision on the Ickes-Lewis Agreement. In other words, the mines are not able, or were not able until last night, to begin the computation of their payrolls for the next payday which will happen around the 23rd or 24th, just before Thanksgiving, and unless that goes out, there is going to be terrible confusion at the mines on next payday. The second thing is that in cases just as I have mentioned, there has been confusion at the mines by the mine workers, with [fol. 183] men such as I have indicated receiving, in effect, under the terms of the agreement as now understood, a reduction in wages instead of an increase in wages. The results to follow further than that will have to come out of the application of the regulations issued by the Secretary of the Interior, which have not yet been made public.

Q. 120. The thing I want to clarify, as I understand your statement, this confusion and all these things stem from a shift from a face to face to a portal to portal arrangement, effected by the Ickes-Lewis agreement of November 3rd?

A. That's right.

Q. 121. Do you recall whether, in July, 1940, following this exchange of letters you have described, there was a public declaration of policy by the Wage and Hour Administrator?

A. There was a press release, I have forgotten the date, which made public substantially the contents of his letter of July 18th.

By Mr. Richardson: We here offer in evidence a press release of Saturday, July 27, 1940, under the heading of "Two Mining Determinations Announced".

By Col. Harris: In addition to the objections heretofore interposed, we want to add to those objections, this: It is res inter alios actor, which may not appeal to Your Honor's judgment, and I also want to say a good deal of it is hearsay.

By the Court: The objection to this document will be overruled and it will be admitted on the same conditions as the documents heretofore offered.

By Mr. Richardson: There is an element in that I should like to clarify. This document has been authenticated as a true copy of a press release by the Director of the Wage and Hour Division. Now, the suggestion that it would not be admissible under the res inter alios actor rule makes me wonder who else they have in mind as having anything to do with this. I am offering it as a public document, the correct text of which has been authenticated.

[fol. 184] By the Court: The authenticity is admitted?

By Mr. Richardson: Yes, sir.

By the Court: All right, let it be admitted.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 21", and is returned as a part of this transcript.

Q. 122. Mr. O'Neill, did you take part in the 1941 Wage Conference?

A. Yes, sir.

Q. 123. In what capacity?

A. As a member of the Wage Committee and also as a member of the Sub-Scale Committee.

Q. 124. Who were the members of that Sub-scale Committee?

A. In 1941, the members of the Committee were Mr. J. B. Morrow who succeeded Mr. J. A. D. Morrow as President

of the Pittsburgh Coal Company, and myself, from the North, and Mr. Lee Gunter of Knoxville, Tennessee, and Mr. L. T. Putnam, of Beckley, West Virginia, who represented the South. Mr. Ezra Van Horn, of Cleveland, Ohio, was Chairman of the Conference.

Q. 125. Who represented the Mine Workers?

A. Well, the United Mine Workers Sub-scale Committee was very changeable. In other words, they put many different people into the Sub-scale committee from time to time. The principal members of the Committee, of course, were Mr. John L. Lewis, Major Tetlow, Thomas Kennedy and Mr. John Owen.

Q. 126. Was that, by the way, the same Major Tetlow who served as a member of the Bituminous Coal Commission?

A. That's the same person.

Q. 127. Was there any shift at the 1941 Wage Conference from the position taken at the time of writing the letter [fol. 185] which you have introduced in evidence, Plaintiff's Exhibit No. 19?

A. No,—as to the demands of the United Mine Workers?

Q. 128. Yes, sir.

A. There was not.

Q. 129. Was there any demand on that occasion by the Mine Workers that they be paid for travel time as such?

A. No, their demand, as I recall it, was for the six hour day.

Q. 130. But no demand that they depart from the established and traditional practices of determining that day on the face to face basis?

A. Not as I recall at all.

Q. 131. At that time, the entire industry throughout the United States was operating on a face to face basis?

A. That's correct.

Q. 132. And continued so down to these recent days in this month?

A. Yes, down to November 3rd.

Q. 133. And before the change was effected in this month, the Government had seized the coal mines, had it not?

A. That's correct.

Q. 134. I mean the Federal Government.

A. Yes, the Federal Government seized the mines, I think November 1st.

Q. 135. And thereafter, on November 3rd, the Secretary of the Interior, acting for the Government, made this ar-

rangement with the United Mine Workers which you say has produced the confusing consequences described?

A. That is correct.

Q. 136. There is no agreement on the part of the operators that this change in the basis of determining the work day be made?

[fol. 186] A. There was an agreement made by the Illinois Coal Operators Association and the United Mine Workers of America, which included, which established an eight hour and a half day at straight time rates with payment of travel time for hours in excess of forty a week. That agreement was submitted to the War Labor Board at a public hearing and the Board denied the agreement as it was written and changed it from an eight hour and a half day at straight time rates, amending the seven hour basic day in the industry, with an assumed travel time of forty-five minutes and permitting the working of one hour theoretically at time and a half at the seven hour rate, which computed, means $8.50 a day for eight hours and forty-five minutes, excluding a fifteen minute lunch period.

Q. 137. Has there been any agreement on the part of the mine owners and operators throughout the Appalachian area that this determination of the work day be shifted from a face to face basis?

A. There has been no agreement consummated in the Appalachian area, although the miners and operators began a meeting on yesterday to try to work out an agreement, and I understand they are in conference again today at eleven o'clock.

Q. 138. They were asked to do so by the Secretary of the Interior?

A. That's correct.

Q. 139. And they are conferring now, shall I say, under duress of present circumstances?

The defendants, by counsel, objected to the foregoing question, which objection the Court overruled.

A. I would say they are meeting now in response to a request by the Secretary of the Interior to try to see if they can make an agreement with the United Mine Workers that would provide them with a basis of work that they could secure a return of the mines to private control.

[fol. 187] Q. 140. Mr. O'Neill did you attend the conference on yesterday?

A. Yes, I did.

Q. 141. The plaintiff corporation here, Jewell Ridge Coal Corporation, was not represented in that meeting, was it?

A. Jewell Ridge Coal Company was not present, and the Southern Coal Producers Association was not present. I don't know whether they are represented directly by the Southern Coal Producers Association or not. If they are, they were not present, directly or indirectly.

Q. 142. The Southern Coal Producers Association was not represented in the conference to which you refer?

A. That's right.

Q. 143. And you know its representative, Senator E. R. Burke, is here present today in this courtroom and therefore, not participating in the conference which you say is in progress today?

A. That is correct. I don't know whether his negotiating committee is in today or not. Yesterday, they were not present.

Q. 144. You have said there was no agreement on the part of the Mine Workers and operators throughout the Appalachian area about this change from a face to face basis of determining the work day, and am I correct in the conclusion from your testimony that the reason for that is the fact that they feel these consequences you have described would result from such a shift?

A. That is correct, unless there is an equalization of face to face time which this does not provide.

Q. 145. Did you participate, Mr. O'Neill, in the 1943 Wage Conference?

A. Yes, I have participated in those conferences since March 10th down to date and there has been so many different conferences that I don't know how to explain this without taking up a lot of time. There have been a number [fol. 188] of different conferences, some of which I participated in and some of which I did not. That came about through the division of the North and the South as to conferences, they conducting their conference separate from the north. I did not participate in the Southern conferences in any way. Later, by reason of a disagreement between the operators in my district and the other operators in the north, we disassociated ourselves from the Northern Appalachian Conference and conducted negotiations on our own behalf.

Q. 146. You did, though, participate in the General Wage Conference beginning March 10th, 1943?

A. That is correct.

Q. 147. On that occasion, I believe the United Mine Workers presented a demand that to conform with the basic and legal requirements for the industry, the maximum hours and working time provisions be amended to establish portal to portal or starting and quitting time for all underground workers?

A. That is correct.

Q. 148. Did the Mine Workers at the same time present a demand for increased pay?

A. They demanded an increase of pay in the basic rate of $2.00 per day, which carried with it a statement that that would include payment for portal to portal, as I recall it. I forget just the exact words, but it was a straight increase on the base rates and I have forgotten the exact wording of that particular demand.

Q. 149. Now, at the time that these demands were presented, had there been a decision by the United States District Court in the Northern District of Alabama, on the travel time issue in the iron ore case?

A. Yes, I learned that by attendance at the conference. I didn't know it until that time.

[fol. 189] Q. 150. And that decision had been that the travel time in the iron ore mine should be included in the work week?

A. That's correct.

Q. 151. I wish you would state whether or not the Mine Workers in asserting the demand for the portal to portal basis, made it clear that it was their intention to conform their status to the finding of the Court in that case?

A. That was my understanding of their position throughout the conferences. The demand for $2.00 per day, in my opinion, as I judged the situation, was their principal demand and the one upon which they placed emphasis.

Q. 152. Were the operators willing to agree with them upon the wage increase?

A. Well, the operators did not agree on any wage increase.

Q. 153. Was there a reason assigned why they did not?

A. The operators' position was that the policy of the Administration, as established by the War Labor Board, under what is called the Little Steel Formula, prohibits a

wage increase as such, because the Mine Workers had received, in 1941, more than the fifteen per cent granted by the Little Steel Formula. I think the figure used by the Government and by the Mine Workers and operators was 18.1% increase in 1941.

Q. 154. In consequence of that, there was no agreement between the Mine Workers and the Mine Operators as to the requested increase in pay?

A. That is correct.

Q. 155. And, as I understand you, the reason assigned for that lack of agreement on the part of the Operators was that it would violate the Government's stabilization program?

A. That is right.

[fol. 190] Q. 156. In the course of these conferences, was there announced a decision by the Circuit Court of Appeals of the Fifth Circuit, in the Alabama Iron Ore case?

A. Yes. I forget the exact date but we learned about it around March 16th or 17th.

Q. 157. I believe that decision was announced on the 16th, if I remember correctly, and you learned about it about that time?

A. It wasn't long getting into the Council Room. I don't know who brought it in but it got there very quickly.

Q. 158. Concurrent with the declination of the Operators to agree to the requested wage increase, and the announcement of this decision, was there a shift in emphasis on the part of the Mine Workers in their demands?

A. Well, I would say there was a very decided shift in emphasis when the Circuit Court made its decision.

Q. 159. I wish you would describe that and explain to the Court just what you mean.

A. Well, up to that time, these negotiations had been conducted largely around the demand for an increase in wages of $2.00 per day, the Operators asserting their position that the Little Steel Formula prohibited such action. Portal to portal had only been a matter of meeting some legal requirement up to that time. When it became effective, I suppose,—well when the United Mine Workers got word that the Court of Appeals had rendered this decision, they immediately transferred their pressure for a settlement from the $2.00 a day issue to the payment of $2.25 a day for portal to portal, based upon time and a half over seven

hours for ninety minutes of travel time, which they asserted to be the correct measure of travel time in the Appalachian area as a result of investigations that they themselves had conducted through their various local Unions throughout the [fol. 191] area in the various mines, and the operators, of course, were, if anything more reluctant to consider the portal to portal payment than they would have been to consider a straight wage increase,—at least, that was my position in the conference.

Q. 160. Was there any suggestion, or did you draw any inference that the emphasis upon the portal to portal demands were addressed to getting from these operators an agreement upon the wage increase, as requested?

A. Well, I can't say what motivated the leadership of the United Mine Workers. I can only say that as far as I am concerned, I suggested that so far as the presentation of the demand in the form it was presented to us, it was a very substantial wage increase, away beyond any requirement, perhaps, of the Fair Labor Standards Act, and had very little relation to the requirements of the law, as we understood it. In other words, the demand of the United Mine Workers, transferred to portal to portal, as I understood it, was that it was a demand to change the working condition for a certain amount of pay asi le from any requirements of the Act.

Q. 161. Then, as I understand you, the whole thing was addressed towards getting more pay?

A. Well, I don't know whether the whole thing was or not. That's a legal question, but the amount requested by the United Mine Workers and the manner of its application was a wage increase, as I understand the requirements of the Act. In other words, they wanted time and a half for travel time as such on each day, with a thirty-five hour week, in effect without a credit for the five hours between thirty-five and forty, as required by the Act, and payment for travel time as such on each day of the week instead of payment of an additional half rate for hours worked in excess of forty as required by the Act.

[fol. 192] Q. 162. Did you or did the operators whom you represent have any accurate data on the travel time throughout the Appalachian area?

A. Well, there were surveys made by the different districts. How accurate they were depends entirely, I sup-

pose, upon the intelligence of the man who made it. So far as I know, actual studies, and those were in mines with which I am associated, I think the study was made with intelligence and the desire to ascertain the accurate facts.

Q. 163. What would you say as to whether the assumed forty-five minutes of travel time is accurate for application generally throughout the Appalachian area?

A. Well, I don't know, really, where the forty-five minutes comes from. It is clearly stated to be an assumption. In my own district the average travel time was shown to be seventy-three minutes per day in a very, very large and substantial proportion of the mines in that district. The aggregate of the Appalachian area North,—that includes Pennsylvania, Ohio, Northern West Virginia, the Panhandle District of West Virginia, and the State of Maryland, was shown to be about eighty-two minutes.

Q. 164. What can you say as to the necessity for adopting or assuming some definite figure for travel time in order to maintain that indispensable competitive equality that you have described?

A. Well, my position throughout the conferences has been —and many people differed with me, that the same face time was essential to maintain competitive relationships in the industry after this maximum demand occasioned by war production has fallen to a normal status of the country's requirements, which will be substantially less and has been substantially less than the six hundred million tons that the Government now requires for 1943 and the six hundred and twenty to six hundred and forty million tons that the Government estimates it will require for 1944.

[fol. 193] Q. 165. Then, if I understand you, and somewhat summarizing, if you do not assume a travel time factor uniform throughout the contracts, but proceed upon the basis of paying for the actual travel time in each separate mine, there would result these inequalities and dislocations that you have previously described?

A. If you put it on an assumed basis, it will have the effect of giving longer work time in one mine than another. If you put it on the basis of equalizing the hours at the face, the compensation required to be paid by the mine with long travel time will be greater in dollars and cents than the mine with the short travel time.

Cross-examination.

By Col. Harris:

Q. 1. Mr. O'Neill, how old were you when you went to work in the mines?

A. Twelve years old.

Q. 2. They don't allow twelve year old boys in the mines any more, do they?

A. No, in Pennsylvania, it is now eighteen; and in effect, under workmen's compensation laws and double indemnity and so forth, it has practically made it twenty-one underground.

Q. 3. When you went in at the age of twelve—was that in 1898?

A. That's right.

Q. 4. How many hours per day or per shift did coal miners stay underground when you first went to work in the mines?

A. Well, at that time, Colonel, the hours were very, very long.

Q. 5. Can you give us approximately what they were, Mr. O'Neill?

A. Well, it was officially a ten hour day but I think it [fol. 194] really was eleven hours of twelve hours, whatever you could get cars to load. Times were very bad.

Q. 6. You mean eleven hours at the face or eleven hours from portal to portal.

A. Well, the company men,—what I mean by that, the men employed by the hour, or the day, worked from ten to eleven hours at their daily tasks. The mine worker, of course, has always worked his hours and come out at different times of the day, but usually, not less than ten hours at the face.

Q. 7. And taking the figure of eighty-three minutes of travel time, that would mean that on that basis a Mine Worker would be underground eleven hours and twenty-three minutes.

A. That's about right.

Q. 8. Now, then, during the course of those forty-four years since you have been in the coal mining business, the Mine Workers have steadily worked to lessen those long hours of toil, haven't they?

A. The majority, I think,—let's say this: that the Miners Union has always, as a matter of policy, supported what is

known or used to be known or used to be called, when I was a boy, the short hour movement. The Central Competitive Field was successful in establishing the eight hour day on April 1, 1898. That became effective in those mines that were Unionized at that time in Ohio, Western Pennsylvania, Illinois and Indiana, and as the Union's influence extended, the eight hour day went with it. And the Union's influence was lessened, the eight hour day became more or less violated by the necessities of competition or the decision of the operating coal company.

By Col. Harris: If the Court please, in order to make myself clear, a great deal of historical background that has gone in, was in our position, objectionable, but we will [fol. 195] want to bring out in that historical background things that, if the Court is going to let them in, should be brought before the Court.

By the Court: Do you want to cross examine without waiving your objections?

By Col. Harris: That's my point.

By the Court: Proceed so to do.

Q. 9. So, through the years, we can summarize by saying that the United Mine Workers, the International Union of the United Mine Workers of America, have tried to get shorter hours of work, both per day and per week, haven't they? They have shortened the work week from six days to five days?

A. Since April 1, 1898, they have supported, or did support, without question, an eight hour day as such, until, I believe, about 1919 and then the United Mine Workers of America, at their Convention in Indianapolis, I believe, in that year, decided to forward, or shorten the work day, if they could, to six hours.

Q. 10. Now, during these years that the United Mine Workers have been operating as a Union, the method of dealing has been for the great coal operators on one hand and the representatives of the International Union of the United Mine Workers of America on the other hand, to get together around a table every two years and start horse-trading for all they were worth, hasn't it?

A. Well, first, I don't think we are great. Horse-trading is a term that's used to—I don't know whether it is to frown upon or cast a doubt upon efforts to negotiate an agreement based upon the then existing and so far as foresight can be

good judgment, the economic conditions that are in front of the industry at that time. That's my conception of the "around the table" business.

[fol. 196] Q. 11. In using the term "horse-trading", I didn't mean any dishonest implications. What I meant was the representatives of the operators and the miners would get together and make proposals and counter-proposals and withdraw one and put in another so that the working out of a contract was usually the result of a long period of trading, wasn't it?

A. Sometimes long, sometimes short, but it is like any other kind of negotiating of that character, where both parties are free agents, that the first part of any conference of that kind is an attempt to clarify what the real issues are, and the real issues are clarified in men's minds not by withdrawal of any particular demand, but by the emphasis put on it across the table, and you finally do, by deduction, reach a conclusion there are one or two or three issues that are important and you devote your time to trying to straighten them out.

Q. 12. How long, ordinarily, do these negotiations preliminary to a contract, how long do they last?

A. Well, some times they have been several weeks. In 1935, I think our negotiations—which is the longest period recently, except this one—extended from April 1 to about September 26 that year. The contract was made effective October 1, 1935. That has been the longest period since these negotiations began. The first and most important Appalachian contract, and the one which established the basis of wages in the whole industry since that time, which restored the Union to its former and even greater strength throughout the country, was negotiated between July 3rd and July 26th.

Q. 13. Now, during this history of collective bargaining, the policy of the operators has been to resist the effort of the miners to get a shorter work day and a shorter work week, hasn't it?

A. I would say quite generally that is true although many [fol. 197] operators have not been in favor of a long work day as such. I think the eight hour day was more generally and more generously accepted in the mining industry and I think it was probably the first big industry in the United States that did accept the eight hour day.

Q. 14. In addition to shorter hours, the United Mine Workers of America have from time to time sought to get increases in wages and wage scales and wage rates, haven't they?

A. Oh, yes, that's true.

Q. 15. And the policy of the operators in these negotiations, the general policy over the years, has been to resist these increases in wage rates?

A. Subject to what I have said to you before, Colonel, that is true. During the period of the clarification of issues, of course everybody asserts everything and everybody opposes everything. There are times when the operators enter negotiations when they know and are quite convinced that there is a requirement for a wage increase. It's an attempt to get to the measure of it.

Q. 16. Now, in addition to those claims, the miners, during these years, have sought improvements in their working conditions?

A. That is true.

Q. 17. For instance, when you went in the mines forty-four years ago, there was a great deal of dead work done by miners that they didn't get paid for, and for which they do get pay today, wasn't there?

A. That's correct.

Q. 18. Would you explain to the Court what dead work is?

A. Much of the dead work, and dead work as a term means work that is not productive, such as the cleaning up of a fall or the re-timbering of a place where the timber has gotten bad and you have to remove it and put in new timber, the cleaning out of debris in a pillar that's been allowed to [fol. 198] stand, so it can be put back in shape, the taking out of pillars that are about to cave in, and all that. It's generic term, Colonel, and means work which is not productive.

Q. 19. And during the course of the years, lots and lots of that has been done by the miners without pay?

A. I would say that's a fair statement.

Q. 20. Now, then, in the old days when you went to work in the mine and the miner was producing coal on a tonnage basis, and the coal came out to the tipple and was weighed, he had no voice, no method of finding out whether he got paid for the coal he actually produced, did he?

A. Colonel, in Pennsylvania, we have had a check weighman law since 1887,—that's when I was born.

Q. 21. That wasn't true generally throughout the United States, was it?

A. Well, my understanding is Pennsylvania was probably one of the first states that had that law. The difficulty we had was that in many places the men did not like to pay a check weighman on the tipple.

Q. 22. That was in Pennsylvania?

A. Yes.

Q. 23. But the United Mine Workers, as an improvement in the working conditions of the men, has uniformly followed a policy of insisting on a check weighman at the mines?

A. That is correct.

Q. 24. In the old days when men were injured, in most of the mines they had no voice in selecting the doctor who would treat them or the hospital to which they would go, did they?

A. Well, I can't tell you about that. In many cases, there was no doctor, as such, for the miners. In the old days, he had to get his own medical attention and pay for it. [fol. 199] The system of a doctor in a mining community came about as a result of the necessity of maintaining a doctor in a small community and that has been worked out in various ways by the mine workers and the coal companies, just the same as hospitalization and hospital maintenance and hospital construction has had to be worked out by mutual contributions of the miners and the operators, as a public necessity and a community enterprise, just like it is done every where else.

Q. 25. And in addition to that, the Mine Workers have uniformly worked to increase the element of safety in the mines, haven't they, so that you now have mine inspectors far more generally throughout the industry than they had when you began working?

A. I will say that is mutual. I think the whole industry had tried to promote safety in coal mining. The fact of the matter is, so far as I know, there hasn't been a bituminous coal mining code in Pennsylvania since 1916 that hasn't been worked out jointly by the operators and the miners and submitted to the legislature and agreed to.

Q. 26. Did you ever have the experience, while you were a miner, that when you went to get your pay, instead of getting paid in money you were paid in scrip? Did you ever have that?

A. There has never been scrip used in my state.

Q. 27. You are familiar with scrip, aren't you?

A. I know what it is, but the Pennsylvania laws have always forbidden the use of scrip, not only in the mining industry but in other industries.

Q. 28. You know that in a great many coal mines throughout the industry, the men were paid off in scrip, don't you?

A. Yes, I have learned that as you learn anything else of that kind.

[fol. 200] Q. 29. And the Mine Workers have consistently fought that method of payment, haven't they?

A. I don't know how consistent it has been, Colonel, but there has been in the last few years a very strenuous effort made by the United Mine Workers to abolish the use of scrip, and it was finally written into an agreement in New York,—I can't recall which one.

Q. 30. They have also urged the right of the miners to trade where they please and that they should not be compelled to trade at Company stores, haven't they?

A. I don't know of any compulsion to trade at Company stores. The only compulsion I know to trade at company stores has been economic necessity for the extension of credit. In Pennsylvania, there is a law prohibiting a coal company from owning a store, and that's been on the books for years and years and years.

Q. 31. That's not generally the law throughout the coal producing area of the United States, though, is it?

A. I think it covers a great area.

Q. 32. Now, in the early days, when you went to work in the coal mine, did the miners furnish their own tools and their own safety equipment?

A. Well, those men that were referred to as contract miners, and by contract miners I mean men that worked by the ton or the yard or the foot, depending on the character of the work he is doing, furnished their own equipment. The day workers and hourly workers were always furnished their own tools, and that lasted right up until now. The theory of that was that a skilled miner in the old days,—and in the old days, a miner was a skilled workman,—I am not so impressed by his necessity for great skill today,—that may be because when I worked there you had to be more skilled than you do now, machinery and [fol. 201] mechanization and application of power has re-

duced greatly the use for the tools the miner had to carry. If you had a rock tunnel to shoot, you made a deal with some good number of miners to put that through for you and they had their own tools and equipment. Just like now, if you are going to build a road from your house to the public highway, you wouldn't buy the equipment. You would make a contract with some man to build it for you and he would bring the equipment to do the job, and the rental of the equipment is probably in what you pay for that job.

Q. 33. But today, generally speaking, throughout the coal mining industry, the cost of tools and equipment is borne by the Company rather than the miner, isn't it?

A. The cost of tools for the tonnage, footage and yardage workers was granted by the War Labor Board in its directive of May 28, 1943, and I wish to add to that that the United Mine Workers did not ask for the furnishing of these tools but that was granted by the War Labor Board even without request or attendance by the Mine Workers at the hearing.

Q. 36. How about the cost of blacksmithing? In the old days, that was charged to the miners, wasn't it?

A. That's right. It was charged in various districts. It was a custom when these men owned a large number of different tools and it was expensive equipment necessary to be maintained.

Q. 35. How long ago was that when they owned that large list of tools and it was expensive to maintain the equipment. How many years ago?

A. Well, I would say that that condition existed in a large measure down to the period of the introduction of the shortwall cutting machine in mines. I can't give you that in a basis where I could say when the shortwalls became the general type of cutting machine in the mine. There were machines that succeeded that cutting machine but were never so flexible and productive as the shortwall machine.

[fol. 202] Q. 36. About how many years ago did you say that was?

A. I would say the shortwall machine probably become the important tool in the mines just prior to—I would say around 1914 or '15.

Q. 37. But they kept on making charges for blacksmithing until recent months, didn't they, generally, throughout the industry?

A. Yes, and there has been, I would say, a decline in the rate for dressing those tools and maintaining them since that time, and also, there has been an elimination, by any means, of mine workers that still do require and do own and do use a great variety of tools. That depends upon your natural conditions.

Q. 38. Heretofore, the miners either had to pay for their lights, renting them from the company, or buying them outside, generally, throughout the industry, didn't they?

A. On the same basis as the tools. The day and hourly workers were always furnished their lights and the fuel for illumination until the electric cap lamp came into being, and the electric cap lamp was also furnished—no, the electric cap lamp was rented, that was a rental basis.

Q. 39. I didn't catch what you said about the electric cap lamp.

A. When the electric cap lamp came into operation and was approved by the Bureau of Mines as a safety lamp, safety light, that could be worn in the gaseous mines, it was a patented article and was leased or rented to the coal companies by the manufacturing concern that owned it. That rental was transmitted to the men who used the lights, and that continued until the War Labor Board Directive.

Q. 40. All right. In addition to the miners paying for the light by which they worked, pretty generally they paid for the explosives with which they shot down the coal for the operator, didn't they?

A. And do yet.

[fol. 203] Q. 41. So that, throughout the industry, even today, a miner who uses a stick of Cardox, for instance, in one of the mines involved in this case, they use Cardox that costs 42½¢ for one shot of it, that is no unusual situation in this case to charge them with the cost of that as compared with the other mines throughout the industry, is it?

A. The charge for explosives by tonnage and piece workers is on the principle that within the rate itself, there is compensation for that expense, and there has never been any question about that until very recently. The cost of

the explosives, like the cost of tools, depends naturally on the character of the relation of the man to the company. If he is a contractor, he should supply his equipment and explosives. If he is a day or hourly worker engaged by the company to perform maintenance or service tasks, it should be furnished by the Company.

Q. 42. Now, then, to summarize, Mr. O'Neill, in the forty-four years that you have been in the coal business——

A. There was a little hiatus in there. I was a brakeman once on the railroad.

Q. 43. Well, during the many years that you have been in the coal business——

By the Court: Say the substantial number of years.

Q. 44. During that substantial number of years, there has been a gradual evolutionary process whereby the hours of work, the working conditions surrounding the coal miners of America have improved, hasn't there?

A. Colonel, I would say that that is true, and the improvement to date has been constructive improvement, and there is nobody would like to see constructive improvement continue more so than I. I do not believe that the present situation in the industry is a constructive one. That's my quarrel with it.

[fol. 204] Q. 45. And Mr. O'Neill, you believe, do you not, that if two men are working and one produces ten tons of coal a day and the other produces six tons of coal a day, that the ten ton man should get more pay, don't you?

A. I think that the rate of pay is predicated on the assumption the more units of production you produce the greater your earnings are. That's true in all piece work rate applications.

Q. 46. You don't find any fault with that?

A. No, I don't find any fault with it so long as the dollar a ton that the one miner receives as compared with the dollar the other miner receives has a fair and reasonable relationship, natural conditions taken into consideration. You can't equalize physical conditions between men, however. One man of a certain physical energy and strength will produce ten tons in a place exactly the same as another man of equal energy and strength will produce six tons.

A. And he is entitled to pay for the ten tons, four tons more than the man who produces six under the same identical conditions?

A. That is correct when you have got a piece-work system.

Q. 48. Now, then, where men are working by the hour, is it your idea that the man who works ten hours a day is entitled to more pay than the man who works eight hours a day?

A. I think that's self-evident.

Q. 49. Now, then, if one man has to spend two hours a day in travel time and the other man has to spend only thirty minutes a day in travel time, don't you think from the standpoint of the men, that equity and good conscience require that that difference be taken into account?

A. Why, Colonel, I do not think so at all. In the first [fol. 205] place, I don't think traveling is work. Because I elect to live in Scarsdale, New York, and take the 8:22 every morning and catch the 5:46 every night isn't any reason why my salary should be raised above the fellow who lives in the apartment house right across the street from the Greybar Building.

Q. 50. Yes, but you recognize there are many differences between the way you travel from Scarsdale to your office and the way a miner travels underground under the supervision of the operator, don't you?

A. I have traveled both ways.

Q. 51. And you see no difference in riding from Scarsdale and riding underground?

A. There isn't any more difference relatively than to try to stand up in a coach train from New York to Washington and you sitting in your comfortable seat in a Pullman. It's the same idea. You can't run Pullman trains in a coal mine, but there isn't any more discomfort in a ride in a trip of mine cars at the rate of six miles an hour than there is sitting in that chair.

Q. 52. You don't think they stick to that rate of six miles an hour, do you?

A. Well, you are compelled to by law.

Q. 53. I am talking about the actual facts.

A. I think they have got to be very careful. I would say generally six miles an hour is a locomotive trip time when it is carrying men.

Q. 54. Do you think that coal mining is a hazardous occupation or not a hazardous occupation?

A. I know that coal mining is a hazardous occupation, of course.

Q. 55. Is it more hazardous to be underground than it is to be out on the surface of the earth, when you have what you call outside men and inside men?

[fol. 206] A. The hazard is on the underground workers, and that varies from man to man, but on the whole, first, there is a difference between the hazard in one mine underground as compared with the hazard in another mine. That depends on many things, the texture of the roof, and all that. Some times there is a greater difference in the hazard between A Mine and B Mine underground than there is difference in the hazard of being employed outside and inside at the same mine. Now, over all, there is a greater hazard in working underground than outside.

Q. 56. You speak of difference between mines, and in this economic history of the coal mining industry of America, the Operators and Mine Workers have been confronted with many variable factors that they had to work out, haven't they. For instance, not only do hazards vary in mines, but the depth of the seam varies from mine to mine, does it not?

A. Do you mean the height or thickness, yes.

Q. 57. The thickness of the coal?

A. That's right.

Q. 58. The quality of the coal varies?

A. That doesn't contribute to the hazards necessarily.

Q. 59. I am leaving the hazards out and looking at it from the economic standpoint. The thickness of the seam varies and the quality of the coal varies from region to region, does it not?

A. And from seam to seam.

Q. 60. And you have impurities and you have different rock formations, so that in some mines a man may have to move half a ton of rock to get out a ton of coal and in other mines he wouldn't have to move a hundred pounds of rock?

A. That is correct and is usually reflected in differences in rates in the wage scale for the difference in the task.

[fol. 207] Q. 61. And you have the economic factor of the geographical location of the mines, some accessible to markets and others remote from markets?

A. Well, that is difficult to reply to categorically, Colonel. In the first place, your wage scale has been predicated upon producing under the same natural conditions as nearly as

possible a uniformity of cost of production. On top of that, you have this situation of large groups of coal mines, regardless of distance, within that area or grouping, having the same freight rates to the same markets, the same rate will apply over a quite broad blanket of consuming destinations. In other words, this whole scheme of marketing and distributing coal is predicated less upon location than any other largely, widely distributed commodity. In other words, there has been an attempt, so far as I understand it, to localize production and distribution of coal and that does depend upon distance. As you get away into the outer reaches you have very small, relatively small freight rate differentials for a broad coverage of distances between mines. The same theory that blankets the destination for the consumption of coal and the same theory that blankets large groups of mines for the minimum freight rate to these consuming destinations is the same theory that has caused the mining industry to predicate its wage structure on equal hours of work at your daily task.

Q. 62. Unquestionably it is true, is it not, that the coal mining industry has worked out, through the operators and the Mine Workers, many complex problems in the past thirty or forty years?

A. That is undoubtedly true.

Q. 63. Now, then, your objection to,—as I understand your language your objection to any shift to a portal to portal basis is because it complicates the wage structure?

[fol. 208] A. Well, I think it complicates the wage structure, under the competitive conditions in the industry, unnecessarily, and not constructively but destructively, and that it isn't work time, as I have always known work time in that substantial number of years that I have been there.

Q. 64. You do know that travel time is considered work time in the coal mines of practically every civilized country on earth, except up to the last few months or few years, but the United States, don't you?

A. Well, I will not attempt to qualify as an expert on travel time in other countries, or bank to bank pa. ment, which varies from district to district, from country to country, and it is my knowledge, or my understanding that in England your bank to bank time is predicated upon a composite man who receives a stipulated sum having no relation whatever to the length of time he travels, except as the average or composite man travels, and does yield in most

districts six and a half hours at the face for the hewers and seven hours for the day and hourly men.

Q. 65. The phrase "bank to bank" came from England, didn't it?

A. That's right.

Q. 66. And bank to bank in England is the substantial equivalent of portal to portal in America, isn't it? The two phrases are synonymous?

A. I would say substantially so, but the method of application has no relation to the expression of "bank to bank" compared to "portal to portal" or "collar to collar".

Q. 67. You are familiar with the International Union of the United Mine Workers of America, are you not?

A. Yes.

Q. 68. And with the constitution of that organization?

A. Well, it's been a long time since I used that.

Q. 69. They had a Constitution when you were with them, didn't they?

[fol. 209] A. Oh, yes, they did. I was familiar with it at that time, but it has been changed greatly, I understand.

Q. 70. I don't expect you to remember the details. I show you the Constitution of the International Union of the United Mine Workers of America, adopted at Cincinnati, Ohio, November 1, 1942, and call your attention to Article 2, stating the Objects of the Union, and to the third paragraph of that Article, which reads: "To demand that not more than six hours from bank to bank in each twenty-four hours and not more than five days per week shall be worked by members of our organization." Doesn't that refresh your recollection, and isn't it a fact that over a period of many years that provision has been in the Constitution of the International Union of the United Mine Workers of America?

A. I do not know where it went in. Frankly, I don't recall it. It may have been or may not have been. It's been a long time since I read this Constitution. No one will deny that the United Mine Workers of America has always included in its objects all there was and a good bit more.

Q. 71. Including portal to portal. Now, Mr. O'Neill, as I understood it, you stated that at every Conference from 1933 or 1934 on, they had advanced the six hour day claim?

A. That's my recollection.

Q. 72. And back in 1919, and again in 1943, in the Wage Conference, they brought up specifically the portal to portal claim?

A. That's my recollection.

Q. 73. Now, then, since those Conferences began in March, 1943, up until the present time, the United Mine Workers of America, since making that demand, have continued to make that demand of portal to portal, haven't they?

[fol. 210] A. Colonel, I think—Colonel, this is what I have to say about that: The Mine Workers, in their formal demands had twelve different paragraphs, as I recall it. Some of those paragraphs included a number of items. I think we made a separation of the different items included in your twelve numbered paragraphs;—I am not sure of the twelve, but I think that's right,—and it equalled something over twenty proposals for changes in wages or working conditions or hours of employment. So far as I know, I don't think the United Mine Workers have dropped any of them even yet. They never do. I mean, as I said, they assert and we deny until we clarify the issues and if there is one real issue at the end, that's what we try to settle. If there are two, we settle them, and an agreement is made on that basis for a period of time. Then the United Mine Workers bring all the demands back in at the next conference. They never drop them.

Q. 74. In the negotiations since March, 1943, up to date, the Mine Workers have not abandoned their claim for portal to portal, have they?

A. No, they have not.

Q. 75. As a matter of fact, their insistence upon portal to portal has been the reason why you haven't come to a contract, isn't it?

A. The insistence on portal to portal, I think, comes from the fact that the Operators would not grant a wage increase and that from the support of the decision of the Circuit Court of Appeals, the United Mine Workers' weight shifted from the wage increase as such to a demand for portal to portal as such.

Q. 76. And that demand has been the reason that you haven't had a contract?

A. Well, I will say it is one of them.

Q. 77. And the cessation of work in the various fields has been accompanied by the shorthand statement, "No contract, no work," on the part of the miners, hasn't it?

[fol. 211] A. Well, "No contract, no work," is a slogan which, like any other practices that you use in the conduct of your business, is brought out at a propitious moment when you want to use it. When you don't want to use it you lock it up in the closet. "We will continue negotiations, pending a contract," is a slogan, too. "No contract, no work" is brought out and used when economic conditions justify its use.

Q. 78. As I understand, you told the gentlemen on the other side in response to a question, that the Operators and the Mine Workers are actually meeting today, trying to work out a contract?

A. Yes, and I am supposed to be there and you have got me here.

Q. 79. No, I didn't get you here, although I am glad to have you. You haven't been able to come to an agreement and arrive at a contract since these negotiations began in March, 1943, have you?

A. That is correct.

Q. 80. That applies generally throughout the industry?

A. You mean Miner-Operator contract.

Q. 81. Now, then, when this letter Mr. Houck joined in signing was written, didn't Mr. Houck take the position that the United Mine Workers of America and your Association had a contract and the Mine Workers wanted to live up to their contract?

A. That was their position throughout,—Mr. Lewis's position, Mr. Murray's position, Mr. Bittner's position,—who was then with the United Mine Workers.

Q. 82. I will ask you if it is not a fact, both in your dealings as a member of the United Mine Workers and as a coal operator, if that hasn't been the uniform policy of the United Mine Workers to live up to their contracts?

A. That's been my experience.

[fol. 212] Q. 83. And you know, do you not, that in this case the attorneys have filed an amendment disclaiming any pay for travel time during the period covered by the contract?

A. I have heard that. I don't know it, as a matter of fact, but I have heard that statement.

Q. 84. Now, on this question of travel time, you coal operators had many problems confronting you and as long as you didn't have to pay for travel time, you didn't devote

your engineering tactics to cutting down travel time, did you?

A. Well, I don't think travel time as such ever entered into engineering problems in the bituminous coal mining industry. However, do not forget that the engineering problem that confronts the industry at all times is to provide transportation of its production at the lowest cost, and that is whether it is better for you to continue—I am thinking now of a prosperous coal company that might have enough money to do this thing,—they all know what they ought to do, but some of them can't do it on account of financial troubles, but where a company is financed, it always is a problem of whether it is more economical to transport its coal so many miles under-ground or either sink a new drift or shaft, and where they figure they can reduce their cost of transporting the coal to the tipple by a new shaft or a new slope or new drift, that's what they do. That automatically shortens the travel time of the mine.

Q. 85. And if they now have to pay for travel time which they did not have to pay for before, they can economize by opening new portals or new slopes or new drifts, or whatever you call it?

A. Well, I wouldn't know how to say that except to say this,—that to the extent that travel time adds to the cost of production of coal, it makes the engineering answer obvious that much more quickly.

[fol. 213] Q. 86. For instance, in your own operation, have you explored in the last few months the possibility of shortening travel time?

A. Well, we are exploring it.

Q. 87. Haven't you found that you can cut down on travel time?

A. We are not sure of that, Colonel. As I say, that's an engineering problem of some consequence. To shorten the travel time to any extent at the two large mines we are trying to consider, it means the sinking of a shaft five hundred feet deep, and that's a lot of money. In other words, it goes back to the economical proposition, and the higher cost of transporting coal, and if you are going to transport men and pay for it, your decision has got to be made on that basis, as to whether or not you will make your great expenditure of money.

Q. 88. Now, Mr. O'Neill, it has been mentioned here yesterday and today about this new problem where a tonnage

man gets travel time. Isn't it a fact that up to the present, up to the time you left Washington, instructions showing how to compute the travel time pay of a tonnage man had not been issued?

A. That is true, Colonel. Of course, you know that the Mine Workers on one hand and the operators on the other have been consulting with the Department of the Interior almost daily, trying to get a formula worked out that would be satisfactory. You also know that the formula agreed to in the Ickes-Lewis Agreement has been submitted to the War Labor Board since last Friday. It hasn't yet been approved but has been looked over by everybody in the industry.

Q. 89. Do you understand, Mr. O'Neill, that that formula would pay a tonnage man who went in and produced one ton of coal as much money for his travel time as it would another tonnage man who went in the same distance, under the same conditions, and produced ten tons of coal on a shift?

[fol. 214] A. It would for the travel time.

Q. 90. Isn't it an incentive plan on travel time? Have you personally checked it?

A. My understanding is that the wage structure is based upon productive time. The travel time is paid for on an assumed forty-five minutes of travel time a day and it provides in excess of forty hours he receives half rate after forty hours.

Q. 91. Don't you understand on the tonnage man, to get his hourly rate, the formula takes into consideration how many tons he produces and what he actually earns while producing, and uses that as a basis to figure his travel time pay?

A. This is correct. As I understand, you add one-eighth of his daily production and at the average rate established on his straight time earnings, or for his mining eight tons a day on this contract, he gets rate and a half on his last ton. However, if the result of this is that the man who has been producing seven tons a day in seven hours at the face is cut back to six hours at the face by reason of excess travel time, his earnings are not going to be as great as the man who has his face time lengthened.

Q. 92. Of course, in any great industry, whenever there is any change or shift, there is always give and take, some profit and some lose, do they not?

A. On an average basis, that is true. In this instance, you have transferred the differentials to the miners themselves at a greater cost of production to the industry and to the country. My criticism of this is that it is not a constructive move.

Q. 93. You have no doubt but that the miners have capable consultants and they have a difference of opinion with you?

[fol. 215] A. I would say, Colonel, that they have very, very capable consultants, and I don't have to look beyond you to know that they do have very capable consultants.

By the Court:

Q. 94. I am not sure that I undetrstand the incentive plan. I understood you to say in the agreement reached between the Secretary of the Interior and the President of the Mine Workers, that forty-five minutes was assumed to be the average travel time?

A. That's right.

Q. 95. But you confused me a little by this incentive plan. Did I get you correctly, the coal loader isn't going to receive pay for that forty-five minutes but some fraction of that, depending on the amount of coal he gets out; is that right?

A. There is an assumed travel time of forty-five minutes, which accumulates to make up the forty hours and its excess. If a mine has fifteen minutes of travel time,—that's an unusual case, it leaves eight hours and half of work time at the face for the men in that mine or that place. If a mine has an hour and forty-five minutes of travel time, which isn't unusual, it leaves but seven hours of work time at the face for the men in that mine, so that the men in the short travel time mine have an opportunity to earn for eight and one-half hours of productive time, and the men in the long travel time only have seven hours to engage in productive time, the effect of it being that the earnings of the eight hour and a half man will be increased if he works the eight hours and a half, whereas the man who works only the seven hours will earn just his present rate

plus *pme*-half time on one-eighth, and there isn't any incentive in that.

[fol. 216] Redirect examination.

By Mr. Richardson:

Q. 1. You have been asked, Mr. O'Neill, about the effort through the years on the part of the Union to get shorter hours. That has been, has it not, shorter hours per man per day?

A. That's right.

Q. 2. As contrasted with shorter hours per ton of coal?

A. That's right. Shorter hours per day.

Q. 3. The emphasis that has been placed in the Conference negotiations by the Union has been for the direct benefit of the employe and not for the larger benefit of the public in getting more coal per man hour?

A. Well, of course, there is lots of argument about that. A reduction in the day's work will, of course, reduce production per day per man unless your hours are so long that it is maintained in that manner.

Q. 4. There is imposed in that problem the matter of mechanization, is there not?

A. Well, I think it applies equally to the men, but by the application of power or machinery, you increase your production per day per man.

Q. 5. The object of mechanization is to shorten the man hours per ton?

A. That's right.

Q. 6. And there has not been the same insistence by the Union for that shortening that there has been in the man hours per day?

A. Well, the Union has not opposed the introduction of machinery, and in many instances, the official organization supported it. The Union has always contended that they were entitled to a share of the greater rate of production to [fol. 217] be reflected in the wage schedules.

Q. 7. But the emphasis, as you explained to Col. Harris, was upon the shortening of hours for the immediate benefit of the men themselves?

A. That's right.

Q. 8. You referred to the long-continued negotiations in 1936 for a Wage Agreement. You participated in those negotiations?

A. Yes.

Q. 9. Do you remember that in the course of those negotiations, there were successive agreements to extend the life of the April 1, 1934, wage contract?

A. That is correct. We had three or four extensions on the basis of continuing work pending negotiations.

Q. 10. Is it not a fact that the 1934 wage Contract, although made effective from April 1, 1934, until April 1, 1935, was actually, by agreement, extended to continue longer?

By Mr. Rogers: We want to object and move to strike the answers about the mechanics of the extensions of contracts back in 1934 and 1935 as having no bearing on the instant case, and therefore, being immaterial.

By the Court: Overruled.

A. That is right. I think there were three or four extensions.

Q. 11. And those extensions were accomplished by the agreements reached in the wage conference of which you were a party?

A. That's right.

Q. 12. You have said that you were a party to the Wage Negotiations in 1943?

A. That's right.

Q. 13. Is it not a fact that in the course of those negotiations, there was an agreement reached between the repre- [fol. 218] sentatives of the Union and representatives of the Operators for an extension through the month of April, 1943, of the agreement that had been made in 1941 for the effective date April 1, 1941, through March, 1943?

A. That is correct, but I think the difference between that and 1935 is this, Mr. Richardson, that on March 22, 1943, we received a telegram from the President, in which he asked work to be continued on that basis, but it was subject to a retroactive payment of any changes of wages that might be made in the meantime, and that policy has been consistently followed since that time by the War Labor Board.

Q. 14. My whole point was to get the simple fact out that there was in April an agreed extension of the 1941 contract?

A. That's right, there was.

Q. 15. And after that, there was an order of the War Labor Board, directing a further extension of that contract, subject to certain amendments which it required?

A. That's correct.

Q. 16. You were asked some questions as to the hazards in the mines.

By Mr. Richardson: If Your Honor please, before presenting this question, we feel the matter of hazards is not germane to the issue before the Court in this case, and we are presenting this question merely to enlarge this testimony on a subject matter which we feel basically is immaterial and against the idea that by asking these questions, we admit ourselves to an acceptance of that as material. I should like to say that we do not.

By the Court: You may examine him on that basis.

Q. 17. You have given some statements as to the hazards in mines, summarized, I believe, by saying, overall, the inside hazards are greater than those outside. Within the mine operations inside, what would you say as to the hazards in man-trips and in travel from portal to the place of work?

[fol. 219] A. I would say that outside of very exceptional circumstances, there is no danger whatsoever in travel in man-trips in the average coal mine. I mean an accident to a man-trip is a rarity.

Q. 18. You have been asked whether the mine owners and the Mine Workers together have worked out many complex questions and I believe you have agreed that that has been done. May I ask you if it hasn't also been your experience that there has been forced upon the mine operators on occasions by the Mine Workers, the acceptance of things to which they did not agree?

A. Well, what period of time are you covering, Mr. Richardson, in that statement. There have been strikes in the industry, there have been delayed negotiations, there have been all those things.

Q. 19. Let's cover the period from 1933 to date.

A. Well, in 1933, we made an agreement. In 1934, we made an agreement. In 1935, after delayed negotiations, from time to time, we made an agreement. In 1937, we—I don't remember the delay, we made an agreement. In 1939, we made an agreement. In 1941, the Northern

operators concluded an agreement, I think, by May or June 10th following April 1st. The Southern operators had much greater difficulty and I forget when they were successful in making their agreement, but they had quite a lot of trouble. In 1943, of course we have not concluded an agreement up to date. In other words, we have been from St. Patrick's Day to Thanksgiving Day, and haven't got an agreement.

Q. 20. The United Mine Workers include among its membership all of the Mine Workers or substantially all of the Mine Workers in the bituminous coal mining industry in the United States?

A. They include everybody except a class of exempted employes, supervisory in character, that is set out.

[fol. 220] Q. 21. With that coverage, is the United Mine Workers in a position, through its power to strike, to force upon the industry such changes as it may determine should be made?

A. I would say the United Mine Workers is a very powerful organization and can use a great deal of force and compulsion with the use of the strike weapon. In fact, I think they are the strongest organization, in that sense, in the United States.

Q. 22. You have been asked if an agreement could be reached by acceding to the portal to portal demand. May I ask,—perhaps this will elicit an explanation of conclusion or opinion,—whether an agreement could have been reached by acceding to the wage increase demand of $2.00 a day without the portal to portal proposition?

By the Court: That question answers itself.

Recross-examination.

By Col. Harris:

Q. 1. Mr. O'Neill, with reference to this retroactive extension you mentioned, of April, 1943, that was in writing, was it not?

A. Oh, yes. At least, Colonel, I will say the first one was; whether the second one was, I do not recall.

By Col. Harris: We feel the writing would be the best evidence.

By Mr. Richardson: Senator Burke has a copy of that and in due time will introduce it.

By Col. Harris: And the same way as to the directive of the War Labor Board and his statement about the directive. We, of course will move to strike out at the proper time.

By the Court: I do not deem it necessary to strike out but do direct that where these matters are embodied in written instruments, they be produced, where available.

Witness stands aside.

[fol. 221] At this point, it being 1:00 O'clock P. M., a recess was taken until 2:00 o'clock P. M., at which time the trial of this case was resumed.

By Mr. Richardson: If Your Honor please, we should like to tender and ask leave to file, as Exhibit 22, a document, being a copy of an address scheduled for delivery by Colonel Philip B. Fleming, Administrator, on September 15, 1940, which has been duly examined by counsel.

To which the same objection was interposed by counsel for the defendants.

By the Court: All right. Over the same objection, the document is admitted.

The document referred to was thereupon filed, marked as:

"Plaintiff's Exhibit No. 22",

and is returned as a part of this transcript.

By Mr. Richardson: Likewise, as Exhibit No. 23, what appears to be a copy of an article written by Col. Philip B. Fleming, Administrator, Wage and Hour Division, for publication in the Engineering and Mining Journal of April, 1941.

To which the same objection was interposed by counsel for the defendants.

By the Court: Over the same objection, the document is admitted under the same circumstances as the previous documents.

The document referred to was thereupon filed, marked as:

"Plaintiff's Exhibit No. 23",

and is returned as a part of this transcript.

By Mr. Richardson: And also as Exhibit No. 24, Interpretative Bulletin No. 13 on Hours Worked, being an

official interpretative bulletin of the Wage and Hour Division, issued in July 1939.

[fol. 222] To which the same objection was interposed by counsel for the defendants.

By the Court: Over the same objection, the document is admitted under the same circumstances as the previous documents.

The document referred to was thereupon filed, marked as:

"Plaintiff's Exhibit No. 24",

and is returned as a part of this transcript.

By Mr. Richardson: There was some objection before noon to the testimony of Mr. O'Neill, touching, I believe, particularly the Directive Order of the National War Labor Board, and suggestion was made that the official documents be obtained. We think, to complete this record, and to bring to this Court's attention, whether it may be entirely germane or not, we should have all these proceedings before the War Labor Board in respect to the Bituminous Coal Contract and the several opinions. That would require a good many documents, and we wonder if we could obtain unofficial copies of all these documents and in the process of this proceeding, submit them and have their authenticity attested and submit them without procuring certified copies from the Secretary of the Board.

By Col. Harris: That will be all right. We wouldn't put them to the trouble of getting those copies. Of course, as to the admissibility, we reserve the right to object.

By the Court: It is understood, so far as their authenticity is concerned, such documents may be admitted by agreement, but as to their general pertinency, materiality and admissibility, the defendants reserve the right to object.

By Mr. Richardson: Thank you, sir. That would include such documents as, for instance, the Illinois Wage Contract and the amended contract and the communications between the Secretary of the Interior and the War Labor Board.

By the Court: All right.

By Mr. Richardson: We would like to include in that a statement from Mr. K. C. Adams, contained in a communication addressed to Mr. J. D. Battle, Secretary of the National Coal Association.

[fol. 223] By Col. Harris: Of course, I am not familiar with that.

By the Court: Nor am I, and I can't rule on it until it gets here. I think the matter of authenticity might well be stipulated.

By Mr. Richardson: That's the only point I speak to at this time.

By the Court: Very well.

J. D. A. Morrow, another witness introduced on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Richardson:

Q. 1. I believe your name is J. D. A. Morrow?

A. That's right.

Q. 2. Where do you live, Mr. Morrow?

A. I live in Sewickley, Pennsylvania.

Q. 3. In what business are you now engaged?

A. I am President of the Joy Manufacturing Company, which manufactures various types of mining machinery.

Q. 4. Have you been in the bituminous coal mining business?

A. Yes, sir.

Q. 5. For how long?

A. My first connection with it was in 1916, when the operators of the Western Pennsylvania District met to organize an association there and engaged me to act as secretary and their labor commissioner, which I did. I remained with them for a little over a year and was then asked by the operators to come to Washington and organize the National Coal Association, representing all of the operators of the United States, in the fall of 1917, which I [fol. 224] did, and I was with them until the fall of 1923. During the war, I acted as general director in the distribution of coal and coke for the United States Fuel Administration, from the 28th of January, 1918, to June, 1919. In the fall of 1923, I left the Association to go into the wholesale coal business. I continued that for about two years and during that time, I acquired an interest in the Joy Manufacturing Company, which was then just being started. In 1925, I closed out my coal business to become the sales manager, vice-president and sales manager, of that com-

pany. In April of 1926, I called on the Chairman of the Board of the Pittsburgh Coal Company in an effort to sell him some of these mining machines. I did not succeed in selling him the machines, but before I got out of his office, he sold me the job of sales vice-president of the Pittsburgh Coal Company. I became president of that company January 1, 1927, and served as president of the company until September 1, 1940, at which time I resigned to become president of the Joy Manufacturing Company. I might say I had retained my stock interest in that company and for a number of years served on its board of directors prior to becoming its president. I have been the president of that company since,—still am.

Q. 6. Then you are not at this time in the coal mining business?

A. No, sir.

Q. 7. Through this experience with the business, however, you became familiar with its general practices, did you?

A. Yes, sir.

Q. 8. Did you take any part in the negotiating of wage contracts?

A. Yes.

Q. 9. Beginning when?

A. In the spring of 1917, the four state competitive field conference was called together to consider a revision of [fol. 225] the contract that had been made the previous year. It is my recollection that meeting was held in New York. I was not on the Scale Committee of the Western Pennsylvania Operators' delegation, as I recall it, but I did have charge of the preparation of their statistical material and participated in their discussions and those of the other Wage Scale Committees of Ohio, Indiana and Illinois throughout that Conference, and attended the general sessions of the Conference. I was not in any other wage conference from that time until 1933.

Q. 10. Did you participate in the hearings on the General Code under the NRA?

A. No, I did not. I was on one of the committees that assisted in drafting the Code. I think Mr. Jamison represented Western Pennsylvania as a witness in those hearings.

Q. 11. You did participate in the negotiating and making of the wage agreement that incorporated the General Coal Code provisions, didn't you?

A. That's true, in the fall of 1933.

Q. 12. You are familiar with the general provisions of that NRA Code, prohibiting the employment of men more than eight hours a day or forty hours a week in the mines?

A. Yes, I recall that.

By Col. Harris:—Am I correct in assuming that the same objection that I put in to Mr. O'Neill's testimony goes as to this?

By the Court: Let it be so understood, and the objections will be overruled to the whole line of questions.

Q. 13. Was it generally understood and followed in practice in the industry that the eight hour day meant eight hours at the working place?

A. I would say it was generally so understood.

Q. 14. And was it generally so practiced?

[fol. 226] A. So far as I know, it was.

Q. 15. Was there any contention in the Wage Conference out of which the 1933 contract came for including travel time within that eight-hour day?

A. No, I recall none.

Q. 16. Did you participate in the Wage Conference in the spring of 1934?

A. Yes.

Q. 17. There, I believe, as Mr. O'Neill has explained, the working day was shortened from eight hours to seven hours?

A. That's correct.

Q. 18. I wish you would state, Mr. Morrow, whether in negotiating that contract, there was any contention by the Union for a departure from the face to face basis of computing the work day?

A. No, I don't recall that there was. The travel time was mentioned, there was some discussion of it, as I remember it, in that Conference, but it is my recollection that the *amin* argument of the United Mine Workers followed the general policy that then was popular of reducing working time in order to spread available employment, and in connection with that discussion, they emphasized the fact that many of the miners had to leave home and travel some distance to reach the mines and had some further

travel time to get to their working places in the mines, repeating that process in the reverse direction when they went home, and that it left them correspondingly less time for recreation and other pursuits than was true of employes in other industries. That was one of the arguments that was advanced in justification of shortening the working time at the face as well as for spreading the work among a larger number of men, which they thought that would do.

Q. 19. Was there any argument asserted that the pro- [fol. 227] hibition against working time in excess of eight hours a day prevented the working day of eight hours exclusive of travel time?

A. I am not sure that I understand just what you mean by the question, Mr. Richardson?

Q. 20. You have said that it was generally understood, so far as you know, that the eight hour day provided in the NRA Code as a maximum work day excluded the travel time?

A. That's right.

Q. 21. And was eight hours at the face?

A. That's right.

Q. 22. Was there any contention at the 1934 Conference to the contrary?

A. No.

Q. 23. And the argument that was made was as you have said, for a reduced day but still a day measured by the hours spent at the face?

A. That's correct.

Q. 24. Did you participate in any way in the hearings on the Fair Labor Standards Act or the Wage and Hour Act?

A. No.

Q. 25. You were then in the bituminous coal mining industry?

A. Yes, sir.

Q. 26. At the time it was enacted in the summer of 1938, was it universally practices throughout the bituminous coal mining industry in the United States to determine the working day on the face to face basis?

A. So far as I know, it was.

Q. 27. And you were pretty generally acquainted with the mining practices?

A. Yes, fairly well.

[fol. 228] Q. 28. After that enactment, when did you first hear of any question arising as to the application of the Wage and Hour Act to travel time in the mines?

A. It is my recollection that the first intimation that I had that there was any question of that kind was when the investigation was made in Central Pennsylvania that Mr. O'Neill mentioned this morning.

Q. 29. Let me ask you there, did you participate in the 1939 Wage Conference?

A. Yes, I did. I was a member of the Negotiating Committee.

Q. 30. In that capacity, were you a member of the Scale Committee?

A. Yes, of the Sub-committee that negotiated the Agreement. As I recall, there were four of us.

Q. 31. When did you cease to be a member of that?

A. When I resigned the Presidency of Pittsburgh Coal Company, on September 1, 1940.

Q. 32. Dealing with the 1939 Wage Conference, where you served as a member of the Sub-committee, was there any contention made on behalf of the Mine Workers that the requirements of the Wage and Hour act would compel including travel time in the work week?

A. I don't recall that there was.

Q. 33. Was there any demand at that time for a change of the basis of computing the work week from face to face?

A. No, I don't remember any at that time.

Q. 34. You say the first time you ever heard this question raised was in connection with the investigation of the Revloc Shaft?

A. That's true. It is my recollection that at some stage of the investigation, and perhaps rather early in its course, Mr. O'Neill called me up to know if any similar investigations were being made in Western Pennsylvania. At [fol. 229] that time there was none and I so informed him, but told him I would be glad if he would let me know what went on in Central Pennsylvania.

Q. 35. When it came to your attention that there was the suggestion or the claim that travel time was to be counted in work time under the Wage and Hour Law, was that a surprise to you?

A. Yes, it was, and my first reaction to it was that when the officials of the Wage and Hour Administration became familiar with the contract and the long established custom

and practice in the bituminous coal mining industry, the investigation probably would go no further in Central Pennsylvania.

Q. 36. Having in mind that that information was a surprise to you, can you say positively that there was not in the 1939 Wage Conference any argument advanced on that basis?

A. I don't recall any at all.

Q. 37. You participated in the Conference?

A. Yes, and if there had been any argument of any moment, I would have remembered it.

Q. 38. You did, in 1939, make a contract, wage contract, on the face to face working day basis?

A. That's true.

Q. 39. And that contract was in effect at the time that this investigation was made at the Monroe Mining Company's mine?

A. That is true.

Q. 40. Mr. O'Neill has stated that occurred some time in February, he thinks, of 1940. Thereafter, was there some investigation made into the practices of the Pittsburgh Coal Company, of which you were President, in respect to compliance with the Wage and Hour Law?

A. Yes, there was.

[fol. 230] Q. 41. About when was that?

A. I would say it was late in May or early in June. It extended over some little period of time.

Q. 42. That's 1940?

A. That's 1940, and it is my recollection there were some inquiries and some investigations made at some mines of other companies there in Western Pennsylvania.

Q. 43. Did you get in touch with Mr. O'Neill then?

A. Yes, I did. The operating officials of the Pittsburgh Coal Company informed me of those investigations and also of the fact that there were rumors beginning to circulate among our employes at the mines to the effect that the company owed them large amounts of money legally.

Q. 44. Mr. Morrow, approximately what was the production of the Pittsburgh Coal Company then?

A. In round figures, it was about one million tons of coal a month.

Q. 45. And approximately how many employes?

A. Between eleven and twelve thousand.

Q. 46. You say the operating officials of the company informed you that there were rumors current among the employes that money was owing on that account?

A. That's true, and among employes of some other companies also.

Q. 47. Did you make any effort to measure that liability, if any such existed?

A. Oh, yes. I asked my Accounting Department to talk with the mine clerks where this investigation had been made and find out what basis, if possible, there might be for any statement of opinion to the effect that the company would owe its employes additional amounts under the Act, [fol. 231] and after a time the accounting department came back and said, of course, they didn't know exactly what the basis might be that would be employed, but if what was being talked about was the basis, the company at that time might have claims against it running up to several hundred thousand dollars, and they would be accumulating at a very substantial rate per day.

Q. 48. And that was in 1940?

A. That was in June of 1940.

Q. 49. And at that time the limit beyond which the penalty pay commenced was forty-four hours against a later forty hours?

A. Forty-two, as I recall it, as against a later forty.

Q. 50. That's right, forty-four the first year and forty-two the second year?

A. Yes, sir.

Q. 51. So this thing would snowball into still greater proportions?

A. It would.

Q. 52. What did you do about it, Mr. Morrow?

A. I asked my General Counsel for his opinion of the situation, and he said it, of course, was quite serious from a corporate standpoint, that we should report the matter to our Board of Directors, which had a meeting in a few days, as I recall it, and it would be necessary for us to undertake to get a determination of that liability, if any, at once. He did not believe the executive officers or the directors would care to continue operating a company subject to liabilities of such magnitude that they couldn't then be measured.

Q. 53. Then what did you do?

A. I called Mr. Lewis, President of the United Mine Workers.

Q. 54. Had you known Mr. Lewis for some time?

A. Oh, yes, I had met Mr. Lewis, I think, in 1919 is my [fol. 232] recollection,—and I told him what was happening out there, and these rumors still persisted among the employes, and I thought it was a pretty serious situation, but it would probably become even more serious and would presently lead to a good deal of unrest out there, probably interruption of production and strikes, and it was a matter that both the United Mine Workers and coal operators were immediately and vitally interested in and we should have a ruling from the Wage and Hour Administration as quickly as possible to find out whether we had a contract or not, or whether it had been overturned with respect to the working conditions and basis of pay by an administrative ruling in Washington. Mr. Lewis agreed that was desirable. I told him I intended to call Mr. O'Neill and some of the operators in the south with a view of seeing if we couldn't get a meeting of representative officials, or that, perhaps, it would be necessary to re-assemble the Appalachian Conference to deal with the situation as presented. Mr. Lewis said he would meet with us at our convenience. I did call Mr. O'Neill, and he agreed it was a matter that had to be dealt with as quickly as possible. I called Mr. J. D. Francis, of the Island Creek Coal Company, and Mr. Duncan Kennedy, of Charleston, and Mr. C. C. Dickenson, of Charleston, and possibly Mr. O. L. Alexander, of New York, president of the Pocahontas Fuel Company, and suggested the desirability of their participating in whatever meeting or conference we had in Washington with Mr. Lewis and the Wage and Hour Administration. At that time, they preferred not to participate in any such meeting on the ground that there were at that time no investigations going on in West Virginia and they felt it unlikely that any such ruling as was being talked about in Pennsylvania would issue in any event. I told them we were not so sure of that, and I thought Mr. O'Neill and I would go on down to Washington ourselves and see Mr. Lewis and Col. Fleming, the Administrator.

[fol. 233] Q. 55. Did you do that, Mr. Morrow?

A. Yes, we did. As Mr. O'Neill told you this morning, we did go to Washington, it was about the first of July,

as I recall, perhaps the 30th of June, and met in Mr. Lewis's office, and the gentlemen were present that he mentioned. We had a discussion with Mr. Lewis and Mr. Hopkins and Mr. Houck, of the United Mine Workers, and they all agreed that it was — condition that we should attempt to get a definite answer about as promptly as possible, and we all agreed to that. What we wished to have, if possible, was a ruling from the Administrator to the effect that the provisions of the contract should be accepted and that a bulletin that had been issued by the Wage and Hour Administration,—I have forgotten the title of that,——

Q. 56. Was that Interpretative Bulletin No. 13?

A. That's the one,—that the coal industry should be an exception to the general rule there laid down. Someone suggested that we should go back and see these attorneys that Mr. O'Neill and Mr. Cowan had previously seen. I told them I had not come to Washington to see anybody who could not give a final answer and the only person I cared to talk to there was Colonel Fleming, and what we needed was a decision as soon as possible.

Q. 57. Just one moment. In that conference you have just now described, was it the consensus that the 1939 Agreement, Wage Contract, then in effect was consistent with the provisions of the Wage and Hour Act.

A. Yes, we thought it was. We had the meeting with Colonel Fleming, as Mr. O'Neill has mentioned.

Q. 58. Incidentally, who made the appointment for that, if you recall?

A. It is my recollection that Mr. Lewis made the appointment. We asked him to go over with us and he said that he was sorry, he couldn't do that he had an appointment somewhere and had to take a train, as I recall, about [fol. 234] twelve or one o'clock, and he was obliged to leave, but he asked us to go over with Mr. Hopkins, General Counsel for the United Mine Workers, and Mr. Houck, which we did.

Q. 59. To get the record straight, who went to see Col. Fleming?

A. It is my recollection that Mr. O'Neill, Mr. Cowan, Mr. Hopkins, Mr. Houck, and myself, went there.

Q. 60. Tell us about your conference with Col. Fleming?

A. We explained to the Colonel what the practice had been in the industry, and that it was the result of long es-

tablished negotiations and experience with collective bargaining and the effort to establish basic wage principles—

The Court here asked for and examined Interpretative Bulletin No. 13, heretofore introduced in evidence.

A. We pointed out to Col. Fleming that if that provision there in that Bulletin 13 was applied in coal mines instead of the then standard seven hour basic working day at the face, for which the miners were paid the same amount in the same districts in the entire Appalachian area, we would have a multiplicity of varying wage payments per day, and those varying wage payments would be represented by the seven hour day plus the varying amounts that would have to be paid according to the length of travel time in each mine; and those would differ from mine to mine, and company to company, and district to district, and it would operate to destroy the very thing that the basic wage agreement was intended to provide, namely, a reasonably secure basis of operation competitively for operators in the same field, and if such basis was not approved, the result would be inequality of working time and consequently disturbed employment conditions in all these fields, and there would be disturbed working conditions between the mines of each company and the result couldn't help but be very disturbing, and it would undo the effort of the joint negotiations over [fol. 235] many years on the part of the coal operators and the United Mine Workers, to establish these firm bases for district wage agreements.

Q. 61. How about whether or not it would further the purposes of the Wage and Hour Act?

A. Instead of furthering the purposes of the Wage and Hour Act, we stated to the Colonel that in our view it would have diametrically the opposite effect. Colonel Fleming stated that it certainly was not the intent of the Act to have any such condition as that and he concluded the discussion by saying that as you men say, where a practice has grown up over a period of many, many years of joint negotiations between the employees and employers, that had been embodied in wage agreement after wage agreement, and was recognized as a stabilizing principle in these agreements, it ought not lightly to be overturned, and if would be his position to make the exception to Bulletin 13 that we had asked, but he said he had a very high regard for the advice

of the Counsel of the office at Philadelphia, Mr. Gallagher; whom he had known for a good many years, and in whose judgment he reposed a good deal of confidence, and he said he would want us to talk to Mr. Gallagher and would want to talk to him himself after that gentleman had discussed the matter with us before he would issue a ruling, but promised to do so promptly when we explained to him the seriousness of permitting an uncertain condition such as we then had and the circulation of rumors such as were then current in Western Pennsylvania to go any further. Subsequently, we had the meeting in Philadelphia that Mr. O'Neill recounted this morning, with the outcome that he told you.

Q. 62. Was it further represented to Col. Fleming there by this group that the arrangements reflected in the effective Wage Contract were reasonable standards as to hours of work and working conditions agreed upon between the employer and employe by collective bargaining?

[fol. 236] A. We told him that we considered that they were. At any rate, they were what had been agreed upon by the representatives of the operators and the miners in the district wage agreement, as a result of the joint conference for that express purpose.

Q. 63. And precisely what was contemplated in this Interpretative Bulletin No. 13 that had been previously issued?

A. Yes, sir.

Q. 64. Following that conference with Col. Fleming, did you meet with Mr. Gallagher and these other gentlemen, Mr. O'Neill has mentioned?

A. Yes.

Q. 65. Mr. O'Neill said that was on the 9th day of July, 1940.

A. I think that's right.

Q. 66. Do you recall who were present on that occasion?

A. I am not sure now that I could give the names of everybody that was present at that meeting. We called at Mr. Gallagher's office and I know Mr. Walter Robison, who had been chairman of the Joint Conference, was there, Mr. L. T. Putnam, of Beckley, West Virginia, and Mr. L. C. Gunter, of Knoxville, Tennessee, who were the Southern representatives on the Operators Negotiating Committee of four, were both present, and Mr. O'Neill was there and I think Mr. Cowan was present. I am not certain about

all the men who represented the Wage and Hour Division. Mr. Gallagher was present and I think Mr. Dorsey was present. It is my recollection that possibly there were one or two other men there, whose names I don't recall, may not have gotten them at the time I was introduced.

Q. 57. Was Mr. Houck there?

A. Mr. Houck was there, and Mr. Knight was there, the attorney for the coal company involved, and there may have been other persons, but I don't recall if they were.

[fol. 237] Q. 68. You have heard Mr. O'Neill describe the manner in which this letter was written. What have you to say as to the correctness of his statements?

A. Well, that is correct. After the discussion, in which we presented to Mr. Gallagher, over a little longer period of time—I mean he had more time to give us than Col. Fleming had, I think we went into more detail with him and his staff, Mr. Dorsey and the other gentlemen, than we did in Washington, Mr. Gallagher felt we should make a statement in writing of what we had told him which he could transmit to Col. Fleming with his opinion, and suggested that the United Mine Workers and the coal operators present each write him a letter. Someone present asked him if it might not be preferable from his standpoint if the operators and the United Mine Worker representatives drew that letter jointly, to make certain that he had a correct statement of fact before him. He said that would be better in his view, if we would write such a letter, and both sides indicated their willingness to do so. We then went to the office of the Weaver Coal Company, in Philadelphia, where we could get some stenographic assistance, and drew up the letter.

Q. 69. Was that letter a joint letter in the sense that all of the persons in this group contributed to its preparation?

A. Oh, yes; they were quite free with their comment and suggestion. It is the kind of letter written by several people when all work on it.

Q. 70. And the finished product represented the consensus of that group?

A. I would say it did.

Q. 71. Was there anything in that at all inconsistent with the agreement reached in Mr. Lewis' office a short time previously in Washington?

[fol. 238] A. No, it followed what had been discussed and agreed upon there as the interpretation that would be de-

sirable in the question of the employers and employes both in the bituminous coal industry. I might say before the letter was finished—we had suggested to Mr. Gallagher when we had a draft of it completed if he would take time to come over and read it through, we would be glad if he would do so, because through our familiarity with the situation, we might unintentionally omit some points he considered important, and we wished to give him a complete statement, with nothing omitted that he might wish to have, and he did come over after the letter was finished, and look it over, and it is my recollection he did suggest two or three additions which were commonplace to us but were perhaps of particular significance to him, and the letter was amended to include those additional details that Mr. Gallagher felt should be included in the statement.

Q. 72. Mr. Morrow, did that letter as written present accurately the facts and conditions in the industry as they have existed to your knowledge?

A. We thought it did. That's what we tried to make it do.

Q. 73. Do you still think so?

A. Yes, sir, I do.

Q. 74. There was a reply to the letter, as Mr. O'Neill has pointed out this morning?

A. That's correct.

Q. 75. After that reply, do you know what happened to the inquiries or investigations at your company's properties?

A. That ended them because there was no further need for anything of that kind.

Q. 76. Did your company accept this reply and the ruling announced shortly thereafter by Col. Fleming as an authoritative ruling upon this question?

[fol. 239] A. We did.

Q. 77. Did you seek any further ruling, any court action or any further determination.

A. No, we considered that conclusive.

Q. 78. You accepted that as a conclusive and final disposition of that matter?

A. Yes, sir.

Q. 79. What can you say as to whether that was generally accepted in like manner through the industry?

A. So far as I know, it was, without question.

Q. 80. The ruling was distributed by the National Coal Association throughout the industry, was it not?

A. That is correct, and also published in the coal trade papers that circulate among all the operators in the country.

Q. 81. And according to your knowledge, it was received and accepted as a ruling putting this question at rest?

A. Yes, sir.

Q. 82. I believe you say you went out of the coal mining business shortly thereafter, September 1, 1940?

A. Yes, sir.

Q. 83. You did so to some extent in the letter which you assisted in preparing, which you have described, but I wish you would tell the Court how, in your view, the shift from the face to face basis of determining the working day to the portal to portal basis would have affected the coal mining industry?

A. In 1939?

Q. 84. At the time you were dealing with it in 1940.

[fol. 240] A. Well, one of the first things it would have been necessary to do in the operation of the mines would have been to have a timekeeper alongside practically every man underground. You would have to know what length of time it took the man to get from the portal of the mine to the place he worked. You would have to know, you would have to have a record on which you could stand, otherwise you would be subject to claim that you hadn't paid this, that, or the other man the travel time to which he was entitled. That would be a very expensive administrative job. In the next place, as I indicated earlier, the earnings of your men, the scale that they would be paid, would constantly be different at different mines. The mines then that had the least travel time would have the lowest production cost because that travel time to the operating face that they would be paying for is nonproductive time. Illustrating it in this way—in one mine of the Pittsburgh Coal Company, in which their travel time was close to an hour and a half, forty-five minutes each way, take that out of the seven hours, which would leave five hours and a half of productive time. All overhead would be based on that five and one-half hours, or if you added it on, and you got seven hours at the working place, which you would probably do, you would have the additional hour and a half time to pay for. Contrasted with that is a younger mine in which the

opening is relatively short, twelve minutes in and twelve minutes out. The first mentioned mine would carry the cost of an additional hour's pay at time and a half, if it was beyond seven hours, over and above the cost that would be paid in the mine that only had twenty-five minutes. That mine paying that additional amount of wages in a competitive market would just not be able to compete with the other mine. Any company in that situation would transfer its business out of the high cost mine to the low cost mine. The men would have less and less work. They presently wouldn't have men to work, the men would go to other mines. Men who owned their own homes would be forced [fol. 241] to travel much longer distances to work, and that situation would be repeated over and over and over, throughout the coal fields, resulting in disturbed, unsatisfactory, objectionable employment. This would inevitably lead to a demand on the part of both the operators and the miners that something be done about it to cure that situation. That's what we presented to Col. Fleming. I think it is just as true today as it was then. It will operate in precisely the same way.

Q. 85. You do not think it would have served to clear the channels of interstate commerce of any obstructions of inequality?

A. No, it would have had the contrary effect.

Q. 86. And would it necessarily have resulted in higher cost production in the coal mining industry?

A. Yes, it would.

Q. 87. That is to say, unless there was a scaling down of the day rate, would it not?

A. It would.

Q. 88. How would the increase in the cost of production have resulted to the competitive situation as between coal and other competing fuels?

A. Every time you increase the cost of coal as against natural gas, fuel oil, hydro-electric power, you lose coal business, and it will inevitably have that effect, which will operate to reduce employment in coal mines, overall.

Q. 89. Were these same things you are talking about, were they true in 1938 when this Act was passed?

A. Yes, sir.

Q. 90. And you think they have been true continuously ever since?

A. Yes, sir.

[fol. 242] Q. 91. *Mor* Morrow, are you informed about the general condition of the bituminous coal mining industry throughout the country at 1938, as to whether it had been on a profitable basis in the preceding years?

A. No, it had not been on a profitable basis, speaking of the industry as a whole.

Q. 92. Industry-wide, it had been operated for some years on a loss basis, had it not?

A. That's correct.

Q. 93. And the competitive conditions in the industry were intense?

A. Yes, sir.

Q. 94. A very small margin in the price made the difference between sales and no sales?

A. Yes, sir.

Q. 95. And to that extent would have emphasized and intensified these dislocations which you have described?

A. That's correct.

Q. 96. Under the conditions that you have described as existing in 1938 and prior thereto for some years, do you think the bituminous coal mine having a long haul, and therefore a long travel time, could have survived in the competitive strife if forced to operate on a portal to portal basis?

A. Only in exceptional cases where there were some peculiar market conditions that would permit it to absorb the additional cost. As a general rule, no.

Q. 97. Mr. Morrow, you are now engaged in the mining machine business, I believe you said?

A. Yes, sir.

Q. 98. Is it or not a fact that the mines through the Illi- [fol. 243] nois area are mechanized to a greater degree than those throughout the Appalachian area?

A. Yes, that's true.

Q. 99. And the more highly mechanized the mine, the fewer man hours there are per ton of coal produced?

A. That's correct.

Q. 100. And therefore, the less significance in cost determination the wages paid the men?

A. Yes, a wage increase in a mechanized mine will increase the cost of production in that mine less than a similar increase will raise the cost of production in a mine not mechanized.

Q. 101. Do you happen to know whether it is a fact that in the Illinois area there are numerous strip mines in which there is no underground travel?

A. Yes, that is true; many of them in Indiana, also.

Cross-examination.

By Col. Harris:

Q. 1. Have you ever been a coal miner, Mr. Morrow?

A. No, sir.

Q. 2. Your experience has been on the side of the management or operators?

A. Except for the period of time when I was selling mining equipment.

Q. 3. You are doing that now, aren't you?

A. Yes. I am not actively selling the equipment in the mines. I am president of the company. I am not acting as salesman.

Q. 4. You are still connected indirectly with the coal mining industry in that you manufacture machinery that is [fol. 244] sold to coal mines?

A. It is one of my chief customers.

Q. 5. Do you own stock in a coal mine?

A. Yes, sir.

Q. 6. More than one?

A. No, sir.

Q. 7. Mr. Morrow, let me see if I get your picture. As I get it, your idea is, first, that in the coal mining industry in America, the pay has always been on a face to face basis?

A. Well, I wouldn't go so far as to say always.

Q. 8. During your experience and knowledge of it?

A. So far as I know, that's been true.

Q. 9. The travel time has never been paid for?

A. No, sir.

Q. 10. And to attempt to pay for travel time would bring about chaos and disrupt competitive conditions. That's your opinion?

A. I think it will have that tendency, yes, sir.

Q. 11. And that's due to the fact that in different mines travel time is of different lengths, and even in the same mine men travel different distances?

A. That's right.

Q. 12. Then you don't have the opinion that travel time is loaded in the wage scale, do you?

A. I didn't say that.

Q. 13. No. I am asking you that as an expert. Do you think travel time is loaded in the wage scale?

A. Yes, sir, it is my opinion that in all previous negotiations, the wage rates agreed upon included the travel time. That is, that was taken into consideration indirectly. Let [fol. 245] me make it a little clearer. I think, Col. Harris, the reason in it was this: If the basis of compensation was fixed as the time the man worked at his working place, you equalize the competitive conditions to that extent between mines, and to that extent you stabilize the earning opportunities of the men in the mines. In order to obtain that advantage, they accepted and absorbed the inequalities in travel time.

Q. 14. You are making a conclusion that is different from your statement of facts, as I understand it?

A. Oh, no, not at all.

Q. 15. What you say is by taking the time at the face and paying them for work at the face only, you were able to stabilize conditions and get a suitable wage scale. Am I correct?

A. I am saying that seems to have been the considered judgment of the operators and miners over a long period of years, because they made the wage agreements that way.

Q. 16. If all the miners were paid on the basis of the amount of time they spent at the face, where would the travel time that any miner had affect his wage?

A. It doesn't affect it as long as he is paid on the face to face basis.

Q. 17. Then so far as the miner is concerned, he has never been paid for travel time and the amount of his travel time has neither increased nor decreased his pay, has it?

A. Well, it may not have increased or decreased the pay of any individual miner, but I think it has operated, the rule that has been followed, to maintain a better quality of earning opportunity and employment opportunity.

[fol. 246] Q. 18. You say the situation you have adopted has been a beneficent economic solution, and I ask you, leaving out your general conclusion about its effect on the miner, about which people might differ, actually the miner has never got any pay, directly or indirectly, depending on the amount of travel time that he had?

A. I think that's true.

Q. 19. Now, this chaos that you talk about, you know, as a matter of fact, do you not, that the ore miners of the United States are paid on a portal to portal basis?

A. I understand they are.

Q. 20. And that they began paying them in Alabama two months before we tried the case down there, and throughout the United States they began paying them by contract along about January, 1942,—you know that the ore miners in Alabama for nearly two years have been paid on a portal to portal basis?

A. No, I am not familiar with conditions in the ore mines.

Q. 21. Is there very much difference between travel underground in an ore mine and travel underground in a coal mine?

A. I can't say that there is. There is, however, a great difference in the competitive situation in the ore industry and a great deal of difference in the value of the product and the market for it.

Q. 22. This question of portal to portal isn't the only great big problem that has confronted the ming operators, is it?

A. No, no, we have had others.

Q. 23. Let's take the question of differentials, for example, so the Court can get the historical background. What was the differential question that bothered the bituminous coal industry for so long?

A. In general, it was the difference in the day rates that were paid in the northern districts of the Appalachian field [fol. 247] as compared with those paid in the southern districts.

Q. 24. How long did that problem perplex the industry, how many years?

A. Well, we had it in 1933, when we made the first Appalachian basic Agreement, and we still had it in the last conference in which I participated, in 1939, six years later.

Q. 25. In other words, that problem was solved in 1941 largely through the efforts of Mr. O'Neill, wasn't it?

A. I don't know as to that. I wasn't present in 1941.

Q. 26. And there was considerable argument and difference of opinion as to the possibility of ever settling that differential between the northern and the southern mines, wasn't there?

A. Yes, sir, that's true.

Q. 27. And in the settlement of that great problem, the claim was made that if those differentials were ever abolished it would literally bankrupt the coal operators in the south, wasn't it?

A. I would rather you would ask the southern operators what they claimed in that respect. At that time, I was on the opposite side.

Q. 28. Weren't you familiar with what your opposition was saying?

A. I hardly think they went so far as to say they would all be bankrupt. They felt it would be a competitive hardship. Some of them would suffer severely.

Q. 29. And all your talk about portal to portal primarily comes back to a difference of opinion on competitive hardships?

A. I wouldn't say difference of opinion. It is a question of fact.

Q. 30. Then you had differentials in freight rates that perplexed the industry for a long time, and you worked [fol. 248] them out?

A. No, they have never worked them out; they still have them.

Q. 31. And that works a competitive hardship on some mines?

A. It not only works a hardship, it prevents the mine from being competitive and makes it extremely difficult for the mine to stay alive.

Q. 32. Isn't it entirely a Utopian dream to think that in an industry as widespread and complex as the bituminous coal mining industry, it can ever operate without having problems confronting both the industry and the workmen?

A. I think that's true, Colonel Harris, of any industry that is alive and progressive.

Q. 33. It is peculiarly true on account of the very nature of the industry, both as to the coal and the way it is produced?

A. It is peculiarly true because labor constitutes a much greater element in coal than other commodities.

Q. 34. Through the years the cost per ton of coal has decreased, hasn't it,—the tendency has been constantly for the cost per ton for labor to decrease?

A. No, I don't think so. I am not up on those figures. I think if you would say, Col. Harris, that the tendency is for the number of hours required to produce a ton of coal to decrease, I would agree with you there, but those man hours are being compensated for at a higher rate of pay, so where you come out net, I can't say.

Q. 35. The final solution of the wage equations, you can't answer?

A. No, I don't know just where that lands.

Q. 36. Now, isn't it a fact that when you turn from the production of coal to the selling of coal, we find that the United States Government and governmental agencies fix [fol. 249] prices at which the coal may be sold and take into account different factors?

A. They are fixing prices. I don't know what they take into account when they fix them.

Q. 37. But it is your understanding that the Governmental agencies try to adjust the prices to stabilize the industry?

A. No, I am not going to be that charitable to the United States Government in its price-fixing formula.

Q. 38. Would you be so charitable as to say that they try to fix the prices so that competitive conditions may be maintained on a certain permanent basis?

A. No, I don't know that.

Q. 39. Well, as a matter of intellectual curiosity, what do you think the Governmental price-fixing agencies are trying to do?

A. I don't know.

Q. 40. Now, then, on this business of the unsettled attitude of the miners when they were telling them up in your country that they had a claim for back time, I will ask you if every time you negotiate a contract, every two years, there are problems to work out in the adjustments under those contracts?

A. In the several districts?

Q. 41. Yes.

A. That's true.

Q. 42. And you find some inequalities in conditions that have to be ironed out and it takes a number of weeks to iron them out and get everything adjusted, doesn't it?

A. In some cases it does, Colonel Harris.

[fol. 250] Redirect examination.

By Mr. Richardson:

Q. 1. You were asked, Mr. Morrow, about the price fixing. Is there anything individual in the price fixing arrangements with which you are familiar?

A. No.

Q. 2. There has never been any attempt in Government price fixing to equalize the handicaps between individuals in any community?

A. I am not familiar with anywhere that is being done.

Q. 3. Going back to your understanding of the attitude on the part both of the mine operators and the Mine Workers, at the time when the letter of July 9th, 1940, was composed, would you not say that it was mutually recognized that travel was not work, and therefore that travel time was not work time?

The defendants, by counsel, objected to the question.

By the Court: I think that is leading and repetitious. The gentleman has thoroughly covered what took place. I will sustain the objection.

Q. 4. May I ask this: What was the recognized attitude as to whether or not travel in and out of the mine to the usual working place was work?

The defendants, by counsel, objected to the question, which objection the Court sustained.

Q. 5. One thing as to which I am not entirely certain: I understood you to say, Mr. Morrow, that you thought the inside mine worker had not, previous to this recent arrangement, obtained any pay based upon the amount of his travel time?

A. Not as such.

[fol. 251] Q. 6. But at the same time, you said that you understood his travel time, speaking generally, or the fact of travel time was included in the determination of the rates of pay arrived at and expressed in the agreements?

A. Yes, the bituminous coal industry has to bid for men against other industries, and it has to set a wage scale which, taking into consideration the conditions under which men are employed, is sufficiently attractive to keep men coming into that industry. In that sense, you do take into

account these conditions that you don't undertake to measure, one by one, so much for this, so much for that, but it is the considered judgment of the negotiating group, as Mr. O'Neill said this morning, that you have this issue or that one that at that particular conference are the important issues, and you address yourself to a solution of them, and it isn't a case of horse-trading it out but getting all the facts before the negotiators and reaching a conclusion based broadly and generally upon those facts, and they will take into consideration indirectly the overall conditions that are not specifically and individually measured in cents per ton or per hour.

Witness stands aside.

JOHN A. LUSE, another witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stuart:

Q. 1. You are Mr. Jack Luse?

A. Yes. My full name is John A. Luse.

Q. 2. Where do you live?

A. I live in Atlantic City, New Jersey.

[fol. 252] Q. 3. What is your business?

A. I am vice-president of the Capitol City Fuel Company, which is a selling agency of coal.

Q. 4. In what occupation were you engaged subsequent to the passage of the Bituminous Coal Act known generally as the Guffey Act?

A. Subsequent to its passage in April, 1937, I became an employee of the Bituminous Coal Producers Board for District No. 7, which is one of the District Boards which was set up under that Act.

Q. 5. Just proceed, Mr. Luse, and explain the connection that you had with the work of the Governmental agencies operating under that Act from the time you started your work until you finished.

A. I went there first in August, 1937, as a classification engineer. In December of that same year, I became secretary of that Board, and in December, 1940, became Executive Secretary of that District Board. I resigned my position from the District Board in June, 1942.

Q. 6. In what District, if you know, are the mines of this plaintiff, Jewell Ridge Coal Corporation?

A. These mines are in what was commonly known as District No. 7 under the Guffey-Vinson Act.

Q. 7. And that was the District with whose Board you were connected.

A. That is correct.

Q. 8. As a general proposition, I believe the Guffey Act authorized the charging of minimum prices for bituminous coal and set up machinery for arriving at the amount of those prices, did it not?

A. In general, that is a correct statement.

Q. 9. Were you present at the hearings which were had in which the testimony was taken, for the purpose of arriving at minimum coal prices under that Act.

[fol. 253] A. I was.

Q. 10. When did those hearings commence and when did they end, and what were the phases of them, in a general way?

A. The hearing was called General Docket No. 15. The first phase of that hearing, which was the cost phase, commenced in July, 1938, and the taking of testimony in that phase of the hearing ended in April, 1939. From time to time during those months, there would be adjournments of the hearing. In that first phase of General Docket No. 15, in the cost hearing, there were taken five thousand pages of testimony and about five hundred exhibits were put into the record on cost. The other phases, the minimum price phase and the coordinating price phase, continued on from the cost hearing and the taking of testimony was finally concluded in January, 1940. These other two phases consumed thirty-four thousand pages of testimony and about twenty-eight hundred exhibits were put into the record.

Q. 11. On the first phase, I believe you had the Commission which was set up under the Act, did you not?

A. Yes, sir, the Bituminous Coal Commission was abolished by Executive Order of the President in June, 1939, which set up the Bituminous Coal Division, Department of the Interior, to take the place of the Bituminous Coal Commission, and the Department of the Interior simply continued on with General Docket No. 15 hearings.

Q. 12. Who were represented at those hearings, Mr. Luse?

A. Well, there were hundreds of parties that entered appearances, and I would say one or two hundred that actively participated.

Q. 13. In particular, were the United Mine Workers of America parties, and did they appear?

A. Yes, sir, they entered an appearance. The appearance was entered by Mr. W. M. Policoff.

[fol. 254] Q. 14. Did the United Mine Workers have a member of the Commission?

A. I don't know whether the gentlemen belonged to the United Mine Workers of America or not at that time, but the two men who were miners were Major Tetlow and Mr. A. D. Lewis. As a matter of fact, before the Coal Commission was abolished, Mr. Tetlow became the Chairman.

Q. 15. After the Commission was abolished, did Major Tetlow stay on with the Commission?

A. He did. He remained as Technical Advisor to the Director, Howard A. Gray, and I know he remained until the final determination of General Docket No. 15 were put out. I believe he remained until prices became effective on October 1, 1940.

Q. 16. In a very general way, Mr. Luse, what was the purpose of those hearings and of the findings which were based upon them?

A. The purpose, in the Act of Congress it clearly states that it was to stabilize the coal industry, and the aim, or at least one of the aims in this effort was to return as nearly as may be the weight of average cost of production.

Q. 17. You went to that by getting the average cost first in the different districts and then by coordinating those for the whole industry, did you?

A. No, sir, that's not a correct statement. We first got the weighted average cost of the district, then this Act, the Bituminous Coal Act, divided the country into ten Minimum Price Areas. The Minimum Price Area in which the plaintiff was included was Minimum Price Area No. 1, which, incidentally, was the biggest Minimum Price Area in the country. For example, in 1937, Minimum Price Area No. 1 produced two hundred and ninety eight million tons of coal and the country produced around four hundred and thirty-two million tons of coal. The next biggest Minimum Price [fol. 255] Area was Minimum Price Area No. 2, which included Indiana and Illinois, and it produced about seventy-five million tons. Of course, the remaining Price Areas pro-

duced the rest, approximately seventy-five or sixty million tons. We would take the production cost of the District, weighted average production cost of the District, and get the weighted average cost for the price area.

Q. 18. By coordinating the costs in that area?

A. That is correct.

Q. 19. What was the starting point in getting the information as to cost? How did the Commission get the data upon which it started on its work? Was it in the form of some report?

A. Yes, sir. These reports were called "Cost Forms", and they numbered the Cost Forms and started off with No. 1. This Cost Form was something that wasn't exactly new. It had been worked on for years from time to time by different cost experts and members of the industry and men from the United Mine Workers and so forth, and they brought in all the talent that they could to perfect as nearly as possible a perfect cost form. These forms were sent out to the Code members.

Q. 20. Those were the individual producers, were they?

A. Yes, of which there were about thirteen thousand. That includes truck mines as well as rail connected mines. The costs were collected, commencing in the year 1936.

Q. 21. On those forms, each producer gave his cost under certain heads which were provided on the form, is that a fact?

A. That is correct, and he was also given specific instructions how to fill out the forms.

Q. 22. Mr. Luse, in the entire course of those proceedings [fol. 256] in which you participated as you have stated, was there ever any contention made by anybody that any allowance of cost on account of payment for travel time should be made?

A. There was not.

Q. 23. Was there, in fact, in arriving at the minimum prices, any allowance made on account of payment for travel time in the coal mines?

A. Travel time, as such, there was not.

Q. 24. Did the issue as to whether payment for travel time was a proper cost item ever come up at any stage in that proceeding?

A. It did not.

Q. 25. Mr. Luse, when were the minimum prices of coal actually established?

A. They were established twice. They were established the first time in December, 1937, and were withdrawn after being in effect seventy-two days, some time in February, 1938. The prices that came out of General Docket No. 15 were established as of October 1st, 1940, and remained in effect with certain adjustments until this past August, I believe it was the 27th.

Q. 26. Now, when the Social Security Taxes became effective, state whether or not they were included, after the effective date of the Act, whether they were included in the elements of cost?

A. Yes, that was specifically set out on the cost form, as was also Unemployment Tax.

Cross-examination.

By Senator Muse:

Q. 1. Mr. Luse, your coal selling agency sells coal from what mines in the Appalachian area?

A. We sell coal from the Minds Coal Mining Corporation, [fol. 257] which is located in Northern West Virginia. We sell coal for Gulf Smokeless Coal Company, which is located outside of Beckley, West Virginia. We sell coal for the Algoma Coal & Coke Company, which is midway between Bluefield and Welch, West Virginia, and we sell some coal from the Big Jim Coal Company outside of Harlan, Kentucky,—just the stoker coal from that mine.

Q. 2. Do you sell coal from Dr. St. Clair's mine?

A. No. I would like to but I don't.

Q. 3. This Guffey Coal Act——

A. The proper name is the Bituminous Coal Act of 1937. It is commonly known as the Guffey-Vinson Act.

Q. 4. That Board you served on was, one of its functions was to equalize or at least to set a minimum price for coal, was it not, to fix a minimum price for coal?

A. We were to assist in it; we couldn't fix it.

Q. 5. You were to assist in fixing the minimum price for coal?

A. That's correct.

Q. 6. The general purpose of the plan was to equalize the unfavorable mines with the more favorable mines in certain districts, was it not?

A. No, sir.

Q. 7. What was the purpose of it, then?

A. The purpose of it was to maintain the fair competitive opportunities and to stabilize the coal industry by returning the weighted average cost of production to the mines within the Minimum Price Area. It guaranteed no one a profit, and as a matter of fact, the high cost mines during a high cost market would have been orderly liquidated.

Q. 8. What do you mean by equalizing inequalities?

A. I didn't say that.

[fol. 258] Q. 9. You used some expression that indicated to me that one of the purposes of it was to equalize inequalities that might exist between mines in the cost of production of coal?

A. No, sir. The Coal Act of 1937 didn't guarantee anyone's business.

Q. 10. What were you trying to do on your Commission? It's not plain to me. It's probably my fault, but it is not plain to me.

A. It is complicated, Senator. That's the reason the hearings took so long. I believe I had better explain it to you this way. We first set prices as a district, as though that district was the only district in existence. That's the simplest way I can explain it to you. Then we took those prices and coordinated them with similarly established or determined prices in the other districts with which we competed.

Q. 11. How did you determine the prices for any particular district?

A. We took the sizes and the qualities of the coals and classified the coals. Cost did not enter in any way into the classification of the coals.

Q. 12. Did the cost of production enter into any consideration in fixing the minimum prices for which that coal was to be sold?

A. From a given mine?

Q. 13. From a given district.

A. From a given district, after we had classified the mines and found out by size and classification what the tonnage was in each size and classification, we then priced that size and classification, then weighted that price against the tonnage included in that classification, added up that figure with all the other sizes and classifications and got a fairly large sum of money, and divided it by the total tonnage pro-

duced in 1936, and came out with a figure of about $2.20, and [fol. 259] said that was it, and that's what we presented to the Coal Commission.

Q. 14. You all were attempting to stabilize the bituminous coal industry?

A. Yes sir.

Q. 15. Because of economic conditions prevailing in the coal industry?

A. Yes, sir.

Q. 16. That was one of the prime purposes?

A. That's what Congress said.

Q. 17. You said you had cost forms that took into consideration many factors. Am I correct?

A. That's correct.

A. 18. On that cost form, your costs did not consider the question of travel time as a factor?

A. The cost form set out no specific item for travel time.

Q. 19. If that cost form had included a specific item for travel time, you, of course, would have taken that factor into consideration?

A. Well, it didn't. I couldn't answer that. I don't know what we would have done.

Q. 20. You dealt with all the other factors on that cost form, didn't you?

A. Yes, but they were known factors.

Q. 21. Do you mean to say that the travel time could not have been a known factor?

A. It was a known factor, but it was included in the rates. In other words, in the Labor Item, which was Item No. 6 on Cost Form No. 1, that item was divided into four parts, [fol. 260] A, B, C, and D. "A" was the items that are included on hourly and day basis, other than such hourly and day basis men which are included in "B", "C", and "D." "B" was for mining, and that included all machine men and men included in the loading of coal, whether mechanical or manual. "C" included all day work and yardage, and "D" included all clerical and supervisory cost.

Q. 22. Did your commission make any investigation or was any investigation made, so far as you know, to determine the question of travel time?

A. We made no investigation, sir.

Q. 23. You simply considered the factors as they were listed on the cost forms given you?

A. That is correct.

Q. 24. And travel time was not a factor on that form?

A. Travel time as such was not set out on that form.

Q. 25. And was not considered, was it, travel time as such?

A. We considered the rates.

Q. 26. The rates for what?

A. That were in the wage agreements.

Q. 27. And travel time was not one of the rates considered on that cost form?

A. Travel time as such was not set out on that form.

Q. 28. And was not considered, was it?

A. I don't understand what you mean by "considered."

Q. 29. All you were dealing with on that form was the actual cost of production, were you not, the actual cost paid by the producer to produce his coal.

A. That's right.

Q. 30. Therefore, if the producer was not paying for [fol. 261] travel time, you didn't consider that as a factor, because they were not paying for it?

A. That's right. We couldn't include it in the cost if it wasn't cost.

Q. 31. If the operators had been paying for travel time, as such, you could have considered it as a cost factor?

A. If they had been paying for it as such, it would have been itemized there. Whatever they paid for, I am sure they reported.

Q. 32. You won't get any argument out of me on that. You simply considered the cost factors that the producer reported to you, obviously?

A. You talk about cost factors. We considered the cost reported to us on this form.

Q. 33. You considered the cost reported to you on the form, and you limited your calculations to those costs that the operators reported to you on the form?

A. No, that's not so.

Q. 34. What is so?

A. When we had these costs submitted to us, they always were six months to a year back of themselves, sometimes longer than that, I regret to say. For example, when the 1937 Wage Agreement was arrived at, we had to take the 1936 costs and adjust for the advance.

Q. 35. You made such adjustments as to bring it up to date?

A. Yes.

Q. 36. I meant the same thing.—That's all.

Re-direct examination.

By Mr. Stuart:

Q. 1. Mr. Luse, was it to the interest of the operators and your District Board to put everything into cost that there [fol. 262] was any reasonable hope of getting allowed?

A. Yes, sir, we racked our brains to try to think of anything we could that would go into the cost. As a matter of fact, we had some extra items which we threw in there, such as demurrage and bad debts and interest on bonded indebtedness, which we never could get them to allow us.

Q. 2. But nobody ever thought of trying to get payment for travel time allowed?

A. Not as such, no sir.

Q. 3. You said that so far as the cost reports that were sent in to the Board included mine labor, that those rates were based upon the Labor contracts between the operators and the Union, did you not?

A. That is correct.

Q. 4. Now, when the question got up to the Commission and the Division, did they look also, if you know, to the rates as fixed in those contracts?

A. All the contracts were put into evidence.

Q. 5. And went before the Commission and went before the Division?

A. Yes, sir.

Q. 6. And the cost determinations, so far as they referred to mine labor, were on the basis of the rates in those contracts, were they or not?

A. The cost determinations were on the basis of—of course, all the evidence in the record and as far as the labor costs were concerned, the Coal Commission never went behind the cost reports and the testimony and exhibits.

Witness stands aside.

[fol. 263] J. A. Hagy, a witness heretofore introduced on behalf of the plaintiff, being recalled, testified as follows:

Direct examination.

By Mr. Richardson: Just to check up on my bearings, I believe when we left off, Mr. Hagy had completed his testimony about Mine No. 1 and had shown the various openings on the man-trips through that mine. I think we have completed that, hadn't we?

By the Court: You so stated when we adjourned on yesterday.

By Mr. Richardson:

Q. 257. This same map, Mr. Hagy, shows also the mine workings in your No. 2 or Jewell Valley Mine?

A. It does.

Q. 258. Is it so identified on the map in some way?

A. Yes. The same pencil colors that were used in the No. 1 Mine are also used in the No. 2 Mine. The red shows the location of the man-trip routes. Brown shows the location of the places visited and portion of the mine where the party walked,—that means the parties of attorneys for both the Union and the Company.

By the Court:

Q. 259. Does the map correctly portray the location of the two mines with relation to each other?

A. It does.

By Mr. Richardson: You have the No. 2 Mine located on your map, Judge?

By the Court: Yes. I was under the impression they were a much greater distanee apart.

Q. 260. As a matter of fact, there are projections which would throw the two mines into continuous operation?

[fol. 264] A. Yes, eventually the adjacent workings would cut one mine into the other.

Q. 261. But at present they are not together?

A. No, they are not together.

Q. 262. How do you get from the mine mouth of No. 1 Mine over to the main entrance to your No. 2 Mine?

A. Go by automobile.

Q. 263. What route do you follow?

A. You follow the route passing the drift mouth at No. 1 Mine, going up and over a spur through the Jewell Ridge Camp, and there is also another route that goes up the hollow and misses the Jewell Ridge Camp. They come together about a mile north of the Jewell Ridge Camp.

Q. 264. What is the distance over the hill from the No. 1 Mine to the No. 2 Mine?

A. Following that route going almost directly north, it's about eight and a half miles from the No. 1 Mine to the No. 2 Mine, by automobile.

Q. 265. You say this map shows in red the man-trip route or routes through the No. 2 Mine?

A. That's true.

Q. 266. Have you prepared, Mr. Hagy, a memorandum that shows the distances from the several man-trip stations on this man-trip line?

A. I have.

Q. 267. The distance between the driftmouth and these several stations?

A. I have.

[fol. 265] By Mr. Richardson: I regret that I haven't a copy of this. In some way, my copies are misplaced.

By the Witness: I have a copy and also have the distances marked on this print.

Q. 268. I hand you a memorandum showing "Distance from Mine portal to Various Man-Trip Stations in Jewell Valley Mine", and ask you if that memorandum was prepared by you and if the distances shown on it are accurate, according to your calculation?

A. Yes.

The memorandum referred to was thereupon offered in evidence by counsel for the plaintiff, and the same was admitted, filed, marked as: "Plaintiff's Exhibit No. 25", and is returned as a part of this transcript.

A. According to this memorandum, the maximum distance from the portal in the Jewell Valley Mine is 14,450 feet.

Q. 269. Was it to that most distant station that you took counsel for the two sides in this litigation when they visited this mine?

A. No. In the No. 1 Mine, we took them the furtherest but in the No. 2 Mine, we did not. We took them up on Four South, which was taken thousand feet from the entrance.

Q. 270. And in arriving at that, they followed the line shown in red on this map?

A. Yes, sir.

Q. 271. Is there more than one opening in this Jewell Valley Mine?

A. We have quite a large number of openings. Most of them are driven outside for drainage. However, some [fol. 266] were driven outside for ventilation. If you will follow me—entering the portal on the main entry up several hundred feet, we see a red line going outside to the left. It's the first line at right angles off the main entry going to the left, and we have a fan out there. The attorneys visited that fan. However, the company's attorneys did not visit the fan. Going around that outcrop, which is that crooked line which winds around, which shows the edge of the coal——

Q. 272. Is it feasible to enter the mine at a place where you have a fan?

A. Yes, it's feasible to enter there.

Q. 273. That is an entrance through which men may come and go?

A. That's true. Going on around to the left there are several other openings where men may enter and following the red line it shows the track on which the man-trips run into No. 2 and 3 Ailys Branch. On the left of the main, the first red line to the right is an opening outside. That's One South Section. Going up further several hundred feet, we have another red line which shows an entry we call Three South, going to the outside, and there is an opening there where we go outside for ten or twelve hundred feet and we have another drift going inside to a section over in the right that we call Peake's Branch, and coming on around the hill to another drift going into what we call No. 3 Peake's Branch, and several other openings around the hill, driven for drainage.

Q. 274. Is it possible for men to enter the mine at these several openings you have described?

A. It is. By going up the main entry to the fourth line [fol. 267] to the right, which we call Five South, we come down to a cross entry that runs directly east and has an

oblong place cut outside from that and cut out to what we call Jones Branch. That is a cut-out where the men may enter and our plan is to cross that hollow and open another mine on the other side, and that mine can be entered on the opening we are going to start there. The drift is already timbered and everything, and as the main entry is driven on up further, it will eventually be driven two thousand feet above where it is now or maybe three thousand, and one place will be turned outside for drainage and men may enter there also. That's merely proposed.

Q. 275. Have any of your employes ever asked permission to enter the mine at any of these several openings you have mentioned other than the main portal?

A. Yes, many of them have. By that, I mean probably a dozen. They live back on the mountain and they would rather enter at these places than come to the driftmouth and get their lights. However, to date the mining department has required each man to come to the lamp house and get his lamp.

Q. 276. That is for what purpose?

A. It is a double check on the men. It is to check to see whether the man is out and check on the section boss.

Q. 277. You mean the Virginia State Mining Department?

A. Yes, Virginia State Mining Department.

By Mr. Richardson: I am leaving the map, Your Honor. Is there anything you wish to inquire about in regard to it?

By the Court:

Q. 278. I don't understand why they are permitted to [fol. 268] enter at places other than the main portal in the No. 1 Mine and not in the No. 2 Mine?

A. They asked us to have all the men enter at the main portal at the No. 1 Mine. They haven't forced us to do it, but merely asked us to, but it is customary, has been for years, for the men to enter close to the working places, and for that reason we don't want to make a man walk over this mountain in the winter time, specially when the roads are muddy and he can't drive an automobile, and just for convenience, we handle the lamps and let them go in where it suits them best at the No. 1 Mine.

By Mr. Richardson:

Q. 279. If I understand you, as a concession to the convenience of the men, by long continued practice, the Mining Department permits you to continue letting certain of your workers to enter the No. 1 Mine at various openings, but over at your newer mine, more recently opened, they require them to all enter at one place?

A. That's true.

Q. 280. And you follow the two practices at the respective places?

A. That's correct.

Q. 281. Mr. Hagy, referring to the most recent mine contract under which you have operated, what was the work day for the inside man?

A. The work day is seven hours and has been under the contract under which we have been working.

Q. 282. And I would like to digress to inquire if down to the time that the Government took over the mines on the [fol. 269] first of November, 1943, your employe relations were still governed by the provisions of that contract, except only as changed by the War Labor Board?

Counsel for the defendants objected to the question as calling for an opinion by a lay witness.

By the Court: I think it is sound as to the legal conclusion but so far as actual operation, I will permit him to testify.

A. Yes, we considered ourselves as operating under the same conditions as the contract that we had been working under.

Q. 283. Were the provisions of the contract applicable to the day to day operations at the mine applied to your work, as a practical thing?

A. Yes, it was.

Q. 284. Do you remember of any provision of the contract for a settlement of questions that arose?

A. Yes, sir.

Q. 285. Were provisions of the contract at any time invoked by any of your employes for determination of their rights?

A. No.

Q. 286. Did you understand me? Did you have any disputes or wage questions arising with any of your employes between April 1, 1943, and November 1, 1943?

A. Yes, we had controversies.

Q. 287. In those controversies, were the provisions of the 1941 wage contract used to settle them?

A. It was. It was used.

Q. 288. Used as to the grievance machinery?

A. Yes, sir.

[fol. 270] Q. 289. Do you remember any particular instance?

A. One that I have in mind, the only one that I do have in mind, if I remember right, we had a grievance over at the No. 2 Mine. This grievance—well, we had the Committee meeting in the presence of Mr. Lee Burke——.

Q. 290. Was that meeting held as provided for in the contract?

A. Yes, sir, and at that meeting, Mr. Burke had the contract in his hand and said "We are still following that contract?", and I told him I thought we were. That's the words that was spoken between us.

Q. 291. Who was Mr. Lee Burke?

A. He is the Field Representative of the United Mine Workers in that District, living in Richlands.

Q. 292. What month was that, do you say?

A. That was a meeting we had either Friday or Thursday night before the contract expired November 1st,—that is, the working agreement.

Q. 293. That was late October, 1943?

A. Yes, that would be the 28th or 29th,—either the 27th, 28th or 29th.

Q. 294. That was just before the Government seized the mines?

A. Yes, the following day the mine did not work, and if I remember right, the other two days the mine did not work and then the first of November came.

Q. 295. Was that grievance that was considered on that occasion settled according to the terms of the contract?

A. Yes, in a way, it was. We settled it satisfactorily.

[fol. 271] Q. 296. And both parties recognized the contract provisions as controlling the grievance that was being discussed?

The defendants, by counsel, objected to the foregoing question.

By the Court: Sustained, as to the legal conclusion, but I will permit him to say what he did.

A. Yes, we considered it closed under those terms in that case.

By the Court: I will strike out the answer, so far as it states a legal conclusion.

Q. 297. What did you do?

A. In that case, we considered it closed at least temporarily.

Q. 298. Did you, as a matter of fact, decide the question at issue as best you could according to the terms of the contract?

A. Yes. However, the question was not in the contract, but we were using the contract. The question was something that was a customary practice, which would be included in the contract under our working conditions.

Q. 299. The contract provides grievance machinery for settling any sort of question that may arise, doesn't it?

A. Yes, sir.

Q. 300. I want to know whether or not this particular grievance was being dealt with and was settled by you and the persons raising it according to the provisions of the contract?

A. Yes, sir, we were handling it according to the provisions of the contract.

Q. 301. Tell me, if you please, just what the contract definition of a work day for the inside men is?

[fol. 272] A. My definition—reading the contract, seven hours of labor shall constitute a day's work in the mines at the usual working places for all classes of labor exclusive of lunch period.

Q. 302. Is what you have read copied from the contract?

A. I can read it from the contract. This is approximately what's in the contract.

Q. 303. I hand you a copy of the contract if you wish to make any comparison. None of us have any question about what is written in the contract. We can all read that. What I want is to have you explain to the Judge just how you applied that in the ordinary day's work. When did the man's day's work start under the contractual arrangement?

A. Under the contractual arrangement, the seven hour day started when the man started to work in his working place at working time.

Q. 304. Did it start when he entered the mine?

A. No.

Q. 305. That is to say, unless his working place was at the entrance to the mine, he hadn't yet arrived at the place where his day's work started?

A. That's correct.

Q. 306. In contrast, do you know or can you tell where the man's day starts under the contract that was made by Mr. Ickes with Mr. Lewis on the 3rd instant?

A. My understanding, the way I read it, his day's work would start from the time he entered the portal and his day continues until he comes out at the end of nine hours.

[fol. 273] Q. 307. Between the time that contract was made and the time you left the mines to come down here, was any confusion experienced at the mines in determining just what was a man's day under the contract?

A. Yes, we had right much confusion. We didn't have any arguments that amounted to anything but many explanations had to be made.

Q. 308. Was there uniformity in the length of a man's day among the various men working for your Company?

A. There was not any uniformity in so far as the amount of time that the miner spent at his working place.

Q. 309. Was there a sufficiently clear understanding of that contract and its application to enable you to prepare your payrolls?

A. No. When I left there had not been any understanding or anything cleared so the men in the payroll office could close the payrolls.

Q. 310. Were you able to satisfy the inquiries of your individual employes as to what their earnings would be?

A. No, we were not. Evidently some one had told them that it wasn't settled and probably they didn't know, and so when we explained it to our employes, they went on and seemed to be agreeing with us that everything was very unsettled.

Q. 311. I wish again to inquire where, in reference to the beginning of the day's work, as you have explained it, under the contractual arrangement, where you required the employe to report for work?

A. We have always required the employe to report at his [fol. 274] working place.

Q. 312. And did you require him to report at any other place?

A. No other place. No other place for work.

Q. 313. You have already explained about the requirement that they enter the mine at Jewell Valley at the place where their lights are, in accordance with the Virginia State Ruling, but I understand you now to testify that there was no requirement that men report for duty at any place other than where their work is to be performed?

A. That's correct.

Q. 314. Have you explained whether the method of traveling from the mine entrance to the place where the duties are to be performed is required or optional with your employes?

A. We do not require a man to go to work at any certain—to ride any certain man-trip or anything like that.

Q. 315. Do you require him to ride a man-trip at all?

A. We do not require him to ride a man-trip. It's optional just so he gets there. If he wishes to come in any certain drift, he can do it, or catch the man-trip at any certain place, he can do it, but he does not have to come to the main portal at No. 1 Mine. Of course, at No. 2, he comes to the lamp house.

Q. 316. If he comes to the main portal, his means of reaching his working place, either by walking or riding a man-trip, is optional?

A. It is optional.

Q. 317. Is the same thing true as to coming out?

A. The same is true as to coming out.

[fol. 275] Q. 318. As a practical matter, do more of them walk out than walk in?

A. Yes, more walk out than walk in.

Q. 319. I believe you have explained that you have seventy-two men on your payrolls who enter the Jewell Ridge Mine at places other than the main portal and proceed, either afoot or on mantrips which they catch at these way-stations, to their usual working places?

A. That's true. Of course, the seventy-two varies. Some months we have more employes than others.

Q. 320. You have referred to your lamps. What kind of lamps are used?

A. We have used in the past three kinds of lamps. At the Jewell Valley Mine, we have used fifty Edison Lamps over there, and we have used about five hundred and fifty Wheat's. That figure may be wrong, but not far off, and at No. 1 Mine, we have used seven hundred Mine Portable Lamps.

Q. 321. You are using from time to time some notes that you have in your hands. Who prepared those notes?

A. I prepared them. No one else has seen them, so far as I know.

Q. 322. Where did you get the information contained in those notes?

A. It is that which I collected myself and the office force, accounting force, collected for me, and the mine foreman and section foremen.

Q. 323. That which you have assembled through the various departments of the company?

[fol. 276] A. Yes, sir, that which I have charge of.

Q. 324. You have said that you have certain Portable Lamps and certain Wheat Lamps. Both of those are portable storage battery electric lamps?

A. Yes.

Q. 325. Describe them to the Court in such way that he will understand their operation.

A. When I said Portable Lamp, I was referring to the manufacturer's name. The ones at Jewell Ridge are made by the Mine Portable Lamp Company and the Wheat Lamps are made by the Kohler Manufacturing Company and the Edison Lamps are made by the Mine Safety Appliance Company. All the lamps are similar in many respects. The Edison has a basic solution for the battery——

Q. 326. Just describe the general effect.

A. It's just a small lamp.

By the Court:

Q. 327. Are they all electric lamps?

A. Yes. The one I have weighs five pounds, is about an inch and three-quarters thick, and the width of it is about five inches.

By Mr. Richardson:

Q. 328. Have you got one down here with you so you can show us?

A. I believe there is one here.

By Senator Muse: We are going to have one here.

By the Court: Just make a note that we will have the lamp.

Witness stands aside.

[fol. 277] At this point, it being 5:00 o'clock P. M., Court adjourned until tomorrow, Friday, the 19th day of November, 1943, at 2:00 o'clock P. M., at which time the trial of this case was resumed.

J. A. Hagy, the witness heretofore introduced on behalf of the plaintiff, being recalled, testified as follows:

Direct examination.

By Mr. Richardson:

Q. 329. Mr. Hagy, at adjournment on yesterday, I believe you had described in a general way the mine lamps which are used at these two mines and had stated that they were storage battery electric lamps, the batteries being contained in a box-like container of some four or five inches in width, or did you give the dimensions?

A. I gave the approximate dimensions.

Q. 330. Give them over again, if you please.

A. About four or five inches in width and approximately, maybe seven inches in length and about one and one-half inches in width, varying in thickness from bottom to top.

Q. 331. Just in order to have the Court see it, I believe the gentlemen for the defendants have one over there, and if we may borrow it, Mr. Hagy will hold it up.

A. This is the type of lamp we use at the No. 1 Mine. We have about seven hundred of these.

Q. 332. The box in your right hand is the battery case, is it?

A. Yes.

Q. 333. And that is the case whose dimensions you have just now given?

[fol. 278] A. Yes.

Q. 334. The light is in the headpiece from which there extends to the battery a cord approximately how long?

A. About three feet and a few inches probably.

Q. 335. Where is the light itself?

A. The light itself is right here.

Q. 336. Where is that carried by the miner?

A. This headpiece has a clip on it which fastens down in the cap like that, and the lamp is carried, some prefer it on one side and some on the other, in a belt that goes around the body and a hook that holds it in position right like that.

Q. 337. Notwithstanding the different manufacturers, the lamps used at these two mines are of the same general kind?

A. They are all of the same principle.

Q. 338. Why was that sort of lamp used by this company?

A. Formerly they used carbide lights. The miners themselves furnished the carbide lamps. Safety organizations and Federal and State Bureaus of Mines wanted a better lamp for safety. They can be worn where you have gas, in the presence of gas.

Q. 339. Don't these lights give better illumination?

A. Yes, that's the principal reason, and it gives a more consistent light than the carbide light.

Q. 340. Is it correct that the company adopted this type of lamp because it provides better illumination?

A. That's why our company adopted it.

Q. 341. Is it a requirement by the company that this type of lamp be used by all inside workers?

A. It is a requirement that this lamp be used for work, [fol. 279] for the workers to work at their actual work.

Q. 342. This being a storage battery lamp, it requires recharging of the batteries?

A. It requires re-charging after each shift.

Q. 343. I wish you would explain the system of handling these lamps? Where do you keep them?

A. We have a lamp house at each mine and the lamps are kept there in this building and charged when they are not in use and that mostly is all done at night. The lamps are charged at night for the day shift, and, of course, the ones who use their lamps at night, the lamps are charged in the day time. We don't use all the lamps, we have several retired because we don't have enough employes, but the same procedure is handled at both mines of charging the lamps.

Q. 344. These lamp houses, Mr. Hagy, at the respective mines are approximately how close to the entrance?

A. The lamp house at No. 2 Mine is something over fifty feet from the lamp house to the entrance portal. At the No. 1 Mine it is something near two hundred and seventy-five feet to where the men get on the man-trip, and that's about fifty or seventy-five feet between the two distances below the main entrance.

Q. 345. Why do you provide these lamps to the men outside of the mine before they get to their working places?

A. One reason is that a man can travel better with one of these lamps with him, safer if he has it with him than if he didn't have it, and when it comes to the man-trip, it is generally early of a morning, lots of times before daylight in the winter time, and he needs a light to walk around the man-trip and walk around the chutes and such [fol. 280] as that, and as a check on who goes in the mines and who gets out, for the reason that when a man gets a lamp before the shift he deposits a check as a receipt for the lamp.

Q. 346. As I understand you, these lamps are supplied on the outside for the comfort and convenience of the men in their traveling, for one thing, and as a check on the number of men in the mine, for another thing; is that right?

A. Yes, sir.

Q. 347. Some of your men, you have said, enter this Jewell Ridge Mine at places other than the main portal and you have referred to their carrying carbide lamps. Do they work with the carbide lamps?

A. They do not.

Q. 348. How are their storage battery lamps furnished to them?

A. Those that walk in enter the mine with carbide lights where they do walk in, and remain near the man-station until the man-trip comes and there they get their electric cap lamps. The section foreman brings these lamps with him when he comes through the main entrance portal and issues those out to the men who walk in and also to the men who catch the man-trip en route.

Q. 349. On that, I wish you would explain what is the typical movement of a man upon arriving at the mine in the morning to work inside. Where does he go first and what does he do? I mean the man who expects to ride in to his place on a man-trip?

A. The man appears at the lamp house and presents a check to the lamp-house man who issues the lamps out.

[fol. 281] The check is given as a receipt and when a lot of men are there, they line up in a long row and take their turn. It only takes just a minute or two to get one of those lamps. The fellow goes up and gives the man a check and the man in the lamp-house knows the man who has given him the check ordinarily,—if he doesn't he looks on the check and sees the number, and he knows exactly where that lamp is located by experience, they are all in rotation, and a man can step within a few lamps of the one he is after, and he hands it out and the man goes on.

Q. 350. You say a minute or two. As a matter of fact, it is just a few seconds, isn't it?

A. Just a second or two. After he gets the lamp, he goes around the shop building,—I have reference to the No. 1 Mine now,—most of them go around the south side of the shop and across to the east side and on the north side of the shop is the track where the man-trips are made up, and if his trip is made up, ready to go, he gets in, and if not, he waits for the next trip, and if it is his, he gets in. A good many of the men go on down below and get in the trip and ride up.

Q. 351. Ordinarily, do the men attach the storage battery containers to their belts and the lamps to their caps immediately upon getting the lamps?

A. Yes, sir.

Q. 352. And they are then prepared to light their way as they go in the mines, when and how they go?

A. Yes, sir.

Q. 353. All those who you say enter at other places, the foreman gets the electric lights for those men, I believe you say?

[fol. 282] A. The foreman gets all the lights for the men who ordinarily work on his section that walk in. He always takes more lights than he needs, in case some one is off. In case some one is off, he will have an extra lamp, and he has a box provided for that purpose and puts the lamps in that box and takes them over and puts them in the tool car, —a tool car is a car on the train or man-trip next to the locomotive, a car that no one rides in, no workman is supposed to ride in it. It is for a safety measure that no one rides in it.

Q. 354. You say each section foreman gets from the lamp-house lamps enough for all the men working on his section

who he thinks will be there that day and who will enter at places other than the main portal; is that right?

A. That's right.

Q. 355. Who carries those lamps which the section foreman so gets from the lamp-house to the tool car?

A. The section foreman on that section.

Q. 356. Are there usually about at the time when he is getting those lamps men, company men or loaders who work on his section?

A. Yes.

Q. 357. Does he ask them or require them to carry this box of lamps from the lamp-house to the tool car?

A. No, he doesn't.

Q. 358. Do you know why he doesn't?

A. Well, they are not—if he was to get them to carry the lamps for him, he would be directing them to work. There have been cases when the foreman has hired men to carry [fol. 283] lamps in a few instances at No. 1 Mine, and so far as my knowledge goes, they were paid for it.

Q. 359. But those men, as I understand you, are not yet at work?

A. They are not yet at work.

Q. 360. So the foreman carries them himself?

A. Yes, sir.

Q. 361. The reverse of that when these lamps are brought back in the evening after the day's work is ended, how is that handled?

A. Handled in the same manner, the section foreman takes them to the lamp-house.

Q. 363. Where does he get them?

A. He collects them as each miner returns from his work inside down to the check-board or man-station, the fellows that walk in from the other side, they leave their lamps with the section foreman and take their carbide lamp and walk on out, and some of them ride out from the inside out to the drift or maybe through the second tunnel and get off there, and in that space, where they are riding, they are not using any lights. I have seen that happen.

Q. 364. In arriving at the outside, who takes the box of lamps from the tool car back to the lamp-house?

A. The section foreman.

Q. 364. Again there are usually about men who have been working under him on his section all day?

A. Yes. He takes the lamps of the men who have been working under him that day and did not ride the man-trip back, but got off some where over on that side of the hill and went home.

[fol. 284] Q. 365. How are those man-trips arranged?

A. We have made numerous changes in man-trips, trying to get the best method to handle them, in the past year. Along about August, along about that period, we had one long man-trip that ran the longest distance, that left the driftmouth first. That was a trip that went over to the Parallel Sections,—that was the most distant. The second trip went to One North Section down towards Gravel Creek. Each one of those long trips would divide, so many cars cut off with the men that went to these other sections. Two North on the Parallel trip, there was a few cars cut off there.

Q. 366. Let me ask you this: Is it a fact that the more man-trips you have, the more hazard there is in the movement of the trips?

A. I think so. That's my opinion.

Q. 367. Is it your effort to keep to a minimum the number of man-trips?

A. We do.

Q. 368. And do you schedule those trips? Do you schedule the movement of those man-trips?

A. Yes, these man-trips are scheduled.

Q. 369. How are the schedules worked out?

A. The man-trips that travel the furthest distance, we attempt to get it out first and the man-trip that travels the next furthest distance, we try to get it out next, and the one that travels the shortest distance is last.

Q. 370. Approximately what distance do you try to maintain between the trips?

A. We try to maintain five hundred feet at least. We [fol. 285] have a rule that they should not be any closer than five hundred feet apart.

Q. 371. Do you have a dispatcher in each mine for the purpose of keeping up with the movement of these trips?

A. We do.

Q. 372. Do you have a telephone system?

A. Yes.

Q. 373. An orderly arrangement by which the men in charge of the trips can keep in touch with the dispatcher's office?

A. Yes, we have an orderly system in which the man-trips are run.

Q. 374. Are the man-trips carefully supervised for safety and direction and dispatch?

A. Yes, I think they are.

Q. 375. Who is in charge of each man-trip?

A. The section foreman, but generally speaking, the motorman and brakeman on that man-trip is in charge.

Q. 376. Are there any rules that the section foreman prescribes or requires observed in connection with the man-trip?

A. I would say that a section boss on a man-trip is right much like a conductor on a train. He directs the motorman and the brakeman who are pulling that trip and supervises the safety of all who ride the trip.

Q. 377. You explained a while ago that the trolley wire is suspended above the tracks but closer to one of the rails than the other. What, in that connection, does the foreman see to?

A. The foreman sees that each man who rides that trip sits in the man-car on the opposite side from the trolley [fol. 286] wire. That's a safety measure.

Q. 378. How about the number of persons in a car?

A. We do not—I don't think we have a written rule how many should ride a man-car, but the section foreman,—it is his duty to supervise and see that not too many men get in one man-car, not enough to crowd them too much.

Q. 379. You have referred to a car in which tools are carried. Explain to the Court about that, please.

A. On each trip we attempt to have a car for tools only. The tools are brought to the shop for repairs or new tools are taken in, the lamps are taken in or some new man going in with a set of tools, they are all put in one car. That's the tool-car and it is hauled in to the section and no one rides that car for safety reasons.

Q. 380. Is any direction given by the foreman in charge of the man-trip to the individual men as to who shall get into each car?

A. I wouldn't think he gives any requests like that. The only time he would say anything like that, in case he saw too many men getting in one car and he might ask one of

the fellows to move over to another car for a safety measure.

Q. 381. Are the cars coming out at the day's end likewise scheduled?

A. Yes, they are likewise scheduled. The schedule is not maintained, of course, on the evening shift as rigidly as it is on the day shift. Right at the present time, we run them as near as we possibly can but formerly, before November 1st, in case some man was late, or something like that, they might wait on him a minute or two, but they run as near as they can on schedule now.

[fol. 287] Q. 382. What time of day did you say your first man-trip which is arranged to go to the most distant section left on the trip?

A. The man-trip going to the Parallel Section was scheduled to leave at seven o'clock in the morning, and as soon as it leaves, the following trip pulls up and will follow out two or three minutes later.

Q. 383. What time did your regular shift of the men who rode that man-trip begin?

A. The working time began at eight o'clock.

Q. 384. And the following man-trips would come at scheduled time of departure following that first one?

A. That's true.

Q. 385. In the evening when they were coming back, you say they were likewise scheduled and I take it from that these man-trips would leave the designated places at stated times?

A. Yes.

Q. 386. If a man wanted to ride out on that man-trip he would have to be there at that time?

A. Yes. At times when a man in this man-trip had some little job to do, occasionally there would be a man-trip to take care of that man who was behind and occasionally you have a slate fall and there would be a man-trip to take care of the men in that section.

Q. 387. Suppose a man arrived late and missed a man-trip, would that deprive him of the day's work?

A. No. I have never known of any one being deprived of a day's work by getting there late, because the gathering [fol. 288] motors, one might be in the shop for some minor repairs, or something, but in case some man misses a trip, we always provide some means for him to get to work.

Q. 388. Is he free to ride another man-trip to a section or junction nearest his place of work?

A. Yes, sir, but it is convenient for a man to ride the man-trip going his way, because if he misses that trip, he would have right much difficulty in getting to work.

Q. 389. Who operate the motors by which these man-trips are moved?

A. The regular motorman and brakeman who operate that motor during the shift.

Q. 390. They are the main line motormen?

A. The main line motormen were pulling the trips, all I have talked about is No. 1 Mine,—the main line motormen were pulling the man-trips at No. 1. Since November 1st, they rarely ever pull it. The man who runs the gathering motor on that section and his brakeman pull it.

Q. 391. Does that section motorman who pulls the man-trip begin his day's work when he commences to pull a man-trip?

A. Yes.

Q. 392. You just referred to the fact that what you have said applies to the Ridge Mine. If there is any difference between the arrangement that you have described there and that followed at the Valley Mine, I will be glad for you to point that out. I had thought that what you said was applicable to both.

A. At No. 2 Mine, I never have known of a main line [fol. 289] motor to pull a man-trip. I guess they have under necessity but I just don't know of it. The gathering motors pulls the man-trip on to his section and that afternoon, he returns with the man-trip.

Q. 393. Those are experienced motormen well trained in the handling of motors and man-trips?

A. They are.

Q. 394. What can you say of the speed at which those trips are handled?

A. Well, we have a rule that man-trips shall be handled at six miles per hour.

Q. 395. You mean not exceeding six miles per hour?

A. That's the rule. We try to maintain that. Some motormen do maintain that and some will coast down hill faster if you will let them. It takes right much discipline to hold the speed of your man-trips down. They can't go so much faster. Most of the motors you purchase have a rated speed of some where between four and main haulage motors eight miles an hour. When a person rides in-

side the mine, it seems they are riding much faster than they are outside. For instance, at the No. 1 Mine, I notice every time I ride a trip going through the tunnel, I think I am going pretty fast, and the minute the motor gets on the outside, it seems like it stops. It's like riding an automobile going through a culvert, you seem to be going pretty fast, and there is a whole lot of that in a coal mine.

By the Court:

Q. 396. What is the gauge of your railroad?

A. Forty-four inches, and the size of your rails is seventy [fol. 290] pounds on the main line and forty-five on cross-entries, secondary entries, and thirty pounds on your room and room entries, thirty pound rail.

By Mr. Richardson:

Q. 397. I neglected to ask you: These man-trips are made up of the ordinary mine cars in which you haul the coal, are they not?

A. Yes, ordinary mine cars.

By the Court:

Q. 398. About how many cars in a train?

A. When we use one haulage locomotive to pull several, some times there will be fifteen or twenty, but with the gathering motors we are using at present, we will have four or five or six, depending on the number of men you have on that section.

By Mr. Richardson:

Q. 399. I wish you would give the dimensions of those cars?

A. I have a blueprint with me of those cars and also have a picture. They are about twelve feet inside——

Q. 400. Let me suggest that you get your blueprint and supply the dimensions of the cars and furnish the blueprint for the gentlemen for the defense, for such use as they may make of it.

A. The mine car is about twelve feet long inside, seven feet wide inside, and some of them are twenty inches above the rail, I believe. I have this one right here,—up to

twenty-four inches above the rail. That's the total height of them.

By the Court: You needn't both- about any illumination to me about mine cars. I tried a patent case involving mine cars and learned all about mine cars I ever want to know.

Q. 401. You have given the outside dimensions of the [fol. 291] car, I believe.

A. I gave the inside dimensions. The outside of the car is thirteen feet long.

Q. 402. By how many feet wide?

A. Seven feet four and one-half inches, outside dimensions.

Q. 403. The bottom of that car on the inside, the lowest pointed, is how much wide?

A. The lowest part of that car is two feet and six inches. That's the lowest part, down between the rails.

Q. 404. And then, alongside of that on each side, rising above it on a sort of bench is an area how wide?

A. That area is two feet three and three-quarter inches.

Q. 405. That's referred to by the men in the mine as the "bench" or "mourner's bench", isn't it?

A. Yes, I think so. I have heard that term.

Q. 406. And above that rises the sidewalls of the car?

A. Yes.

Q. 407. To what height?

A. That rises eleven inches from the bottom of that bench up to the top of the car. This however, is a low car, the same as Jewell Valley and the Bethlehem Steel car at No. 1, but the cars we bought from Enterprise and use at No. 1 Mine are a little higher,—about four inches higher.

Q. 408. Where a man is riding in one of these cars, where does he ordinarily sit?

A. At the No. 1 Mine practically all the time he sits up on the bench, and at the No. 2 Mine, some sit on the bench [fol. 292] and some sit down in the bottom.

Q. 409. How high is the bottom above the ground?

A. The bottom is four inches above the rail, than the bottom of the bench is nine inches above the top of the rail.

Q. 410. Mr. Hagy, you have said that the miner who works inside and expects to ride a man-trip ordinarily stops at the lamp house and passes in a check as a receipt

for his lamp and takes his trip and moves on in. Where does that man report for work or check in for his actual day's work?

A. He checks in at the check-board inside but reports for work in his working place.

Q. 411. Where is that check-board?

A. That check-board is—generally, in each section of the mine, it may be a little different, but generally it is on the section where the man-trip stops. The man puts his check right on the board and goes to his working place. Some of them who need powder will go to the powder house and then go on to the section.

Q. 412. There is a check-board maintained on each section for the checks of the men who work on that section?

A. That's right. However, there is an exception to that. Over at the No. 2 Mine, they have some check-boards over there but there are sections where the section boss calls the roll instead of checking on the board.

Q. 413. Where you have the check-board on the section, how does the man check in for his day's work? What does he do?

A. Gets off this man-trip and goes to the check-board and hangs his check on the board.

[fol. 293] Q. 414. What is that check?

A. It's the same check that he puts on his mine car.

Q. 415. That's a metal disk that bears his number?

A. Yes, sir.

Q. 416. And he hangs that on the board which is maintained on his section for the purpose of recording the men who are present on that section; is that right?

A. Yes, sir.

Q. 417. Does that bear the same number as the number on his lamp-house check?

A. Yes and no. We try to give each man the same number lamp as he has company check number.

By the Court:

Q. 418. Does the lamp itself bear a number?

A. Yes, sir. But that isn't always true. If you have a lamp that gives out, goes out of service, you have to give him a substitute. We try to do that and generally do, but these lamps are like everything else that needs service, they fail every now and then, and the way we do those, they are

sent back to the manufacturer and repaired. The majority of the repairs we don't do ourselves.

By the Court:

Q. 419. How many checks has a man got, ordinarily?

A. He ordinarily has around ten.

Q. 420. Carries those with him?

A. Yes, he generally carries enough checks, in case something happens that he doesn't get his coal dumped, that he will have some more checks the next day.

[fol. 294] By Mr. Richardson:

Q. 421. You are speaking of the ordinary coal loader who uses the checks to tag the cars he loads?

A. Yes.

Q. 422. A company man wouldn't have occasion to carry that many checks, would he?

A. No. When you go on a section, the company man never tags, just the coal loaders.

Q. 423. How does the company man report in?

A. He generally sees the section foreman some where enroute on the man trip and he goes and gets his tools, some sections have a tool house and some don't, some keep them in break-throughs, and he generally gets his tools and comes up and sees the section boss or the section boss sees him. Lots of times maybe he knows something he wants done in a hurry and he will go straight on and go to work to help some coal loader get started.

Q. 424. Is this check-board or checking-in place the first place the section foreman knows accurately just who is to work during the day on his section?

A. That is right. He does not check the check-board inside the lamp house that morning. When he comes out in the afternoon, when all the lamps are put up in the rack, the man in the lamp house looks over the board and sees who hasn't got his check and he might be afraid that man is inside and he goes out and tells the mine foreman "Check Number so and so is not out",—that man might have gotten sick or something and gone around the hill. It is a check to see that nobody is left inside.

Q. 425. You have referred to the roll call system at [fol. 295] Jewell Valley Mine. Explain where that roll is called.

A. That roll is called just at the place where the men board the man-trip, coming outside.

Q. 426. Or where they alight when they go in?

A. Yes. I don't believe they call it when they go in in the morning. The section foreman looks over the men and sees who is there. They may call the roll. I don't know.

Q. 427. Where does he do that and make his check of the men present, either by count or roll call?

A. The section foreman can do either one, but he must make a check, by count or roll call, as he prefers.

Q. 428. Does he do that at the destination of the man-trip?

A. He generally does. At least, he does from his memory. He can tell just by glancing over the trip who is in. His memory will recall anybody that is off.

Q. 429. I believe you said that the section foreman was a time-keeper and kept the time of the men who were working on his section?

A. The section foreman keeps all the time of all the men working on his section unless it's a wire man or somebody sent there by the general mine foreman, and in that case, the general mine foreman keeps it.

Q. 430. Where does he prepare the list of the men present for keeping their time, in the morning, I mean?

A. In the morning, the section foreman marks off the company men's time before the section foreman goes inside, and he assumes that everybody is going to be on. In case somebody is off, he telephones the office and makes any [fol. 296] change necessary. I am talking about the company men.

Q. 431. You mean he makes a list of all the company men he would expect to work that day, whether he has seen them or hasn't seen them?

A. That's right.

Q. 432. And if, on going inside, any of those men happen not to be present, then he checks them off and reports them?

A. Yes, he calls the office by telephone and tells them who is on and who is marked off the sheet he turns in. However, the coal loaders, he turns their time in at night for that day.

Q. 433. Where, in the morning, does he prepare the list of the coal loaders present?

A. The section foreman doesn't prepare the list of the coal loaders present until some time during the day, in the afternoon,—that is, on his time sheet. He never knows what coal loaders are going to be on because the coal loader comes in and hangs a check up and they are gone to the working place, and lots of them he never sees until he goes to the working places.

Q. 434. And he determines during the day from a check of the section check-board who is at work?

A. Yes.

Q. 435. Are the practices you have described followed at the Jewell Valley Mine, too?

A. Yes, as far as keeping the time is concerned, the same procedure. However, over at No. 2 Mine, one or two of those sections are so far away from the telephone they can't call the office. We have had a little difficulty in getting wire and such as that during the last few months, and the [fol. 297] motorman brings the time out and gives it to the dispatcher and he telephones it in.

Q. 436. But the section foreman prepares his list of the persons working in the manner that you have described?

A. Yes.

Q. 437. You have referred to the tool box where the company men working on the respective sections pick up their tools. Where is that in reference to the end of the man-trip?

A. It is right near the man-trip station. As I mentioned once before, all sections don't have tool boxes in the sense of a box; most of them, a good many of them do. Some of them have a place in a breakthrough that they take the tools around and put them there, so when they come back the following shift, they will know where to go and get them. They bring these tools close to the closest place they have to start the next morning. A bender, they never carry it, it is too heavy to lift. They leave it where they think they will need it the next time, but some tools they generally bring out to the tool-house next to the man-trip station.

Q. 438. Where do the coal loaders leave their tools?

A. In the working place. They do not bring them out unless they bring them to have them repaired or sharpened in the blacksmith shop, unless they know they are going to change places.

Q. 439. What sort of tools are carried in the tool-car?

A. Augurs, picks, anything that is taken outside to be repaired or sharpened and brought back in. In case some fellow leaves to go to another job, they bring his tools in the car.

Q. 440. Whose tools are they?

A. They are the coal loader's. No other tools can be [fol. 298] put in there.

Q. 441. Who puts them in and takes them out of the man-trip car?

A. A coal loader generally looks after his own tools. Some times he asks the motorman to do it and the motorman will do it for accommodation, but generally, he looks after them himself.

Q. 442. From the end of the man-trip, the men proceed to their usual working places afoot, do they?

A. Yes, sir. Some times some of them will catch a trip going up in that direction and ride to the mouth of the place. I have had section foreman, in case somebody wants to do that, to let them ride as close to the working place as they can.

Q. 443. That doesn't ordinarily amount to much?

A. No, the furtherest, I would say, would run around fifteen or sixteen or seventeen hundred feet from the place they get off the man-trip, depending on the height. We try to run them as close as we can so they can get to the place at an adequate time.

Q. 444. You have referred to explosives that you use at the Jewell Ridge Mine. I believe you have already explained that they are kept in a main magazine outside and such as may be requisitioned each evening by the coal loader for the next day's work is brought in at night and placed in the section magazine?

A. Yes, sir.

Q. 445. You have explained that in your evidence, have you?

A. Yes, sir, and the following morning the section foreman issues it out to who the powder is to go.

[fol. 299] Q. 446. The section powder magazine is near the section toolbox, is it?

A. Generally, it is. The powder magazine has to be a building that will not burn and for that reason, we use cinder block or stone or something like that to build this powder house out of. In there we keep the electric caps and

powder and we generally try to locate that as near the center of the section as possible.

Q. 447. So that each coal loader will pick up his powder and take it from that point to the room or working place where he is employed?

A. That's correct.

Q. 448. Over at No. 2, you explained, I believe, that they use Cardox?

A. Yes, they use Cardox over there.

Q. 449. Where is that delivered to the men?

A. It's taken up on the section by a man who runs what we call the powder motor, the same as we do the others.

Q. 450. Is he a company man?

A. He is a company man and he takes it up there and puts it in a little box prepared for this Cardox and the motorman on that section picks them up there and delivers them to the working place where they are needed, and when he does that, he collects a little check as payment for the Cardox.

Q. 451. Did you make a calculation of the average travel time required for all of the men in each of these two mines?

A. I did. I did with the Safety Engineer, the Mine Foreman and a couple of company men as assistants.

[fol. 300] Q. 452. Let's deal first with the Jewell Valley Mine, if you please. I hand you here a memorandum showing "Estimated Time-Portal to Portal-No. 2 Mine, as of July 6, 1943". Is that memorandum your work?

A. It is my work and the assistants I had helping me. The assistants I had helping me were Clay Thompson, Safety Engineer, Johnny Long, Assistant Safety Engineer, and the mine foreman and night foreman.

Q. 453. It was done under your supervision?

A. Yes.

Q. 454. Is it prepared to show the overall time of travel for men working in the various sections of that mine from the main entrance or portal to their working places and return?

A. Yes.

Q. 455. Using your memorandum as a guide, I wish you would explain how you determined the travel time required for the movement of each of these employes?

A. The first I knew about getting this travel time, I was instructed to get what the travel time would be on those

various sections without telling the motorman or any one we were timing the trips for a week. We timed the trips and took the average of the exact time it required the motorman to make the trip and then we had no way of determining how long each man walked from the man-trip to the place unless we had some one checking each man. What we did, each one of the ones I had helping me walked those distances, as he would come down to the room, he would take the time, on down to the next one, so after we timed, for this date approximately, this was about two or three days after the timing was all made that this report was [fol. 301] made, and that's what it was then. It changes from day to day. Some places gets shorter and some longer. It depends on whether you are advancing or retreating,—so the time it takes from the working place to the man-trip or the man-trip to the working place is approximately correct. One man will walk faster than another, or one fellow maybe since the time this report was made might have a breakthrough or one room cut from the entry to another, to come more quickly than this, but this was as correct as we could get it.

Q. 456. What you have done is to take the aggregate of man-minutes consumed in travel in this mine and divide it out so as to give an average number of minutes of all the men in the mine required for traveling from the entrance to their working places and back?

A. Yes.

Q. 457. Now, beginning at your first section indicated, First South, what time does your man-trip leave the outside for the day's work?

A. I don't have my definite figures with me on that, but it leaves some where between seven-ten and seven-thirty. On this, I don't have any record with me of when that man-trip leaves except the time it takes it to make it.

Q. 458. This memorandum was prepared from accurate data, wasn't it?

A. Yes.

Q. 459. This has it scheduled at seven-twenty.

A. I don't have the same one you have. One is a re- [fol. 302] copy of the other and the time is left out of the one I have.

Q. 460. Mr. Hagy, will you answer my question?

A. Here the man trip averages leaving at 7:20 and comes out at 3:40 for that week.

Q. 461. Follow through and show the method by which you have arrived at the average number of minutes required by each of the men for his travel.

A. The man in this case goes in at 7:20 and comes out at 3:40, takes thirty minutes for lunch. I believe that's the way these are figured. That makes him fifty minutes times nine loaders and seven company men so it gives him four hundred and fifty minutes travel time for the loaders and three hundred and fifty for the company men.

Q. 462. That is to say, you have taken the time required to carry the men at each section from the entrance to their working places, multiplied that by the number of men on that section and found the total number of minutes on that section?

A. Found it for that section for both loaders and company men.

Q. 463. And in like manner you have found the total number of man minutes travel time for all men on each of the sections?

A. Yes, sir.

Q. 464. And then have you averaged it for the entire mine?

A. Averaged it for the entire mine.

Q. 465. What general average did you get for all the men working in the Jewell Valley Mine?

A. Sixty-seven minutes.

Q. 466. What does that 67.1 minutes represent?

[fol. 303] A. That represents the time it took, leaving the drift mouth, to get to the sections and the men to get to the places, plus the time it takes in the afternoon to get from the places back to the mantrip and ride the mantrip to the outside.

Q. 467. Stated another way, doesn't that represent the overall time from portal to portal, less the lunch hour?

A. Yes, and work time.

By Mr. Richardson: We should like to file in evidence the memorandum described by the witness.

The paper was thereupon filed, marked as: "Plaintiff's Exhibit No. 26", and is returned as a part of this transcript.

Q. 468. And here, Mr. Hagy, is a comparable memorandum relating to Mine No. 1. Did you likewise prepare this?

A. Yes, sir, likewise prepared this and it is prepared in the same manner. Both of these include all the men that work in the mine, motormen, main line motormen, pumpers and everybody that works in the mine.

Q. 469. What is the average travel time for the men computed in that way at your No. 1 Mine?

A. Eighty-eight minutes.

By Mr. Richardson: We should like also to file this as an exhibit.

The paper referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 27", and is returned as a part of this transcript.

Q. 470. By way of checking on the mantrip time, have you [fol. 304] made any actual checks or any checks on the actual time for the movement of these man trips from the mine portal to certain sections?

A. Yes, we have had two men, one of them working each day the mine works on this and the other just when he had an opportunity, checking each section on which we pull man-trips, and that's over a period of about two months,—something like that, I have the dates, all of it in detail that I can refer to. I have a list through from September 14th to November 1st in the No. 1 Mine that I made a thorough study of.

Q. 471. This may be repetition, Mr. Hagy, but at the end of the day, do the coal loaders have any particular place or order in which they check out?

A. The coal loaders, at the end of the shift, they come down and get their checks off the board, but in case they clean up or quit work before the shift is over with, they have the privilege of coming down to the check-board and getting the check and walking out and walking home or waiting for the man-trip, whichever they prefer. Quite a number come out and walk from the drift up on the mountain and around the road and go home before the shift is over.

Q. 472. Without waiting for the end of the shift or the mantrip?

A. Yes, sir.

Q. 473. Are they entirely at liberty to do that whenever it suits them?

A. Yes, sir.

Q. 474. And to go out whenever they care to do so?

[fol. 305] A. Yes, sir. We try to encourage them to stay and work some where else and get another ton of coal out. Some of them will.

Q. 475. That's optional?

A. Yes, sir.

Q. 476. Do you ever have incidents of men going in the mine, who, for reasons of their own, decide they don't want to work that day?

A. Yes, we have men who do that, men who go in to their places and decide after they get there that they don't want to work, or find some one has let some slate fall, or something like that, that they won't clean up, thinking the other man hasn't treated them fair. I have reference to double shift places, in this statement, or some place the machine didn't cut and they didn't have any coal there, rather than go to another place, they walk out.

Q. 477. If the man is deprived of the day's work by reason of some condition or act beyond his control, I believe the contract provides at least two hours' pay for the man?

A. That's a company man. If the coal loader goes in his place and something there deprives him of working that day, we send him some where else to work, and if he works that day, he will get credit for his full time on time and a half rate.

Q. 478. But he doesn't have to work unless he wants to?

A. Yes, sir.

Q. 479. And goes on back out?

A. Yes, sir.

Q. 480. And in that case, is he paid anything for that day?

[fol. 306] A. No, not unless he works.

Q. 481. But he has spent his time going in and coming out?

A. Yes.

Q. 482. Let me go back to the lunch time. I believe heretofore that has been half an hour?

A. Yes.

Q. 483. By the November 3rd Agreement, it was reduced to fifteen minutes?

A. Yes.

Q. 484. Going back to the half hour period, where will he eat his lunch?

A. Ordinarily, a coal loader will eat his lunch all along as he has a spare moment during the shift. Some will wait

until it gets about twelve o'clock and come to a breakthrough and sit and eat lunch. Company men will generally have lunch when they are at the mouth of the entry, where they take the hour that is most convenient to them.

Q. 485. You mean half hour?

A. Yes.

Q. 486. During the lunch period, the company man is entirely free of any duties or requirements by the company?

A. Yes, as long as he don't have an emergency, he is.

Q. 487. And the coal loader being a piece worker is at liberty to take his lunch whenever he wants to?

A. Yes.

Q. 488. I want to know if the company man or coal loader is any more free from requirements by the management during his lunch period than he is while he is traveling in [fol. 307] and out of the mine?

A. I would say his freedom would be about the same when he is traveling in and out as it would be at the lunch hour.

Q. 489. As I understand you, nothing is asked of him at either time in the way of work?

A. No.

Q. 490. But both times, he has to comply with the requirements as to safety?

A. Yes.

Q. 491. And at both times, he is subject to the same general conditions?

A. Yes, sir.

Q. 492. I believe these Exhibits Nos. 26 and 27 which you have filed show that there is a variation in the travel time for the men on the different sections?

A. The travel time is different for each section.

Q. 493. But under the contractual system that obtained down to the third of this month, the work day was constant for the workmen all over the mine, was it not, the period of time in the work day?

A. The number of hours was the same, except those who worked overtime handling man-trips or in cases of emergencies and things like that.

Q. 494. Now, to shift from a face to face basis to a portal to portal basis would make a variation in the work day, would it not?

A. Yes, it would make considerable variation in the work day as to the productive time in the working place.

[fol. 308] Q. 495. By that you mean the productive work day, the time spent at actual productive work?

A. Yes.

Q. 496. Would or not that result in different rates, depending upon where they might be working in the mine?

A. I have not learned anything of the present arrangement, the way that the employes will be compensated, but I would think that it would. I would think when it works out, it will be balanced some way or other. The way I understand it now, it would not be balanced. For instance, a man working in a place near the drift mouth where he would have very little travel time would be loading coal and have some advantage over the man who has to ride a long way and would only get to work probably seven hours a day while the man at the place that is close might get to work eight hours a day. It makes some difference, so I don't know what arrangement will be worked out on that, but it is my idea there will something have to be done in a manner so it will compensate, to make his earnings some where near the fellow who has the advantage.

Q. 497. Actually, Mr. Hagy, do you know how the thing would be worked under the proposed arrangement?

A. I do not know.

Q. 498. I believe any authoritative instructions as to how it would work has not yet come out?

A. We hadn't received any when I left Jewell Ridge.

Q. 499. Have you any general figures on the percentage of overall producing cost at these mines represented by the direct labor cost?

[fol. 309] A. Yes.

Q. 500. Approximately what is that percentage?

A. Yes, for several months I have checked on it and it runs right near eighty per cent, the labor cost is about eighty per cent of the cost of the coal at our mines. It has gone up considerably lately due to the man power shortage which results in less tonnage.

Q. 501. Do most of your employes reside on company-owned premises?

A. No, most of our employes live off the company premises.

Q. 502. Where do they live, Mr. Hagy?

A. We have busses that haul our employes from the surrounding country. We have one that runs from Tazewell and I believe we have one that runs from Abb's Valley and

several running from around Richlands and several from Cedar Bluff and about two or three busses and trucks from Honaker, one off of Garden Creek down in Buchanan County to the Jewell Valley Mine, and another that goes through Short's Gap, from Raven through Short's Gap, through the Bill Young Gap to the Jewell Valley Mine, and one from Bradshaw, West Virginia, up to the No. 2 mine. I have a list of those and the number of men they haul and how far they make the trip.

Q. 503. You have a list prepared showing that?

A. Yes.

Q. 504. Let me see it, please, sir.—Mr. Hagy, have you prepared a memorandum showing the number of men who are transported at the expense of the plaintiff company to [fol. 310] the respective mines where they work in busses or pick-up trucks?

A. I have. I had Mr. J. H. Miller, our personnel Director, who also has the rationing of gasoline to all the people in our section of the country who use busses and trucks to haul employes to and from the mine, I had him to make up a list for me.

Q. 505. I hand you a memorandum showing the names of various persons, the names of operators, numbers of men, mine workers transported, the route and mileage, and ask you if that is a memorandum prepared by you or under your supervision?

A. It is.

Q. 506. And from the records of this company?

A. It is.

Q. 507. Does that memorandum show the number of men transported to the respective places of mine operations at Mine No. 1 and Mine No. 2 and the distances these persons are hauled?

A. It does. As an exception to that, though, the distances shown here are the distances reported by these bus drivers and truck drivers to the Rationing Board there for gasoline certificates, and we pay these men that haul the employes, we pay the rides for these men at the rate of a cent and a quarter a mile up to a maximum of fifty cents. After it gets over a certain mileage, we pay fifty cents a day for the rides of these employes. There are quite a number of others who ride but they ride in their own cars. This is a list of the employes we pay for to ride to and from their work.

Q. 508. How many men altogether are hauled to Mine No. 1?

A. I had the list just a second ago and this list shows [fol. 311] No. 1 Mine, one hundred and seventy-six men.

Q. 509. And No. 2 Mine?

A. Number Two Mine, a total of two hundred and forty-five men.

Q. 510. What arrangement do you make for having those men carried? Do you contract with the owner of some vehicle to bring those men to their work and return?

A. We contract with the owner of the vehicle to pay him so much for hauling these men to and from work.

Q. 511. In general what types of vehicles are used?

A. At the No. 1 Mine, we have seven trucks, boxed up with seats in them so that they will haul from about ten up to about sixteen or eighteen men, and then we have three busses that run at No. 1 Mine, two on the day shift and one on the night shift.

Q. 512. I see you have here the name of "Bus Operator" over on the left hand side. Are any of these bus operators themselves inside employes of your mine?

A. They all are employes, I believe, with some exceptions: This C. C. Selfe Bus Line is—he has some of his drivers who work in the mines and run outside. Some of them do not. The same applies at the No. 2 Mine, one bus hauls miners back and forth and spends the time between the time the men go to the mine and the time they leave the mine running a passenger bus between No. 2 Mine and Richlands.

Q. 513. And these men, some of them your employes operating their own vehicles, haul other employes to the working place or the mine where they work and you pay them at [fol. 312] the rate you have stated for that service?

A. Yes, sir.

The memorandum referred to was thereupon filed as an exhibit on behalf of the plaintiff, and the same was marked: "Plaintiff's Exhibit No. 28", and is returned as a part of this transcript.

Q. 514. Others of your employes, I take it, use their own means of arriving at the mine where they work?

A. Yes, they do.

Q. 515. And a considerable number of employes live on company premises?

A. Yes. I have a list of houses. In checking our map at the mines, not this map, I counted at the No. 1 Mine one hundred and seventy-one residences where miners live and work in the mines. Of that number, there will be a few that work in the office. Out of that one hundred and seventy-one residences, I don't have a check on it, but there should be around two hundred employes who live on the premises at No. 1 Mine. At No. 2 Mine we have one hundred and five houses. We have thirty-five that are always full and a lot of double houses and a good many of those stay empty. The house count I had there was twenty-six empty and we should have around one hundred employes who live in the camp at No. 2 Mine. All these are numbers on the payroll. That doesn't mean the average number that works. It's the number on the payroll.

Q. 516. Are the entrances to your mines located at the most conveniently accessible place from a standpoint of a majority of these men?

[fol. 313] A. Yes; I think so, with the present roads, the most convenient place.

Q. 517. Has there ever been any attempt made to provide other entrances or portals?

A. There has been some thought along that line but no action has been taken.

Q. 518. Could you conveniently establish other places accessible to roads that the men could use the year around?

A. It's possible. It would be rather expensive in the mountainous country that we have. The mountain roads would have to be improved so they would be all weather roads, it would be quite a distance further and with all our roads on top of the ridges, other roads would have to be graded down to the various drifts, various entrances, and there would be right much road grading in order to change or make other openings where the men would all get in a road closer to the working places by way of automobiles.

Q. 519. Speaking generally, do you think very much could be done in the way of shortening the travel time in those mines?

A. Not very much unless that work I just mentioned would be completed by building roads and making other openings and probably changing tipple sites or something.

Q. 520. The memorandum you used on your Exhibit 28 showed the number of men that are transported. Are they

likewise carried back in the afternoon after the day's work is done?

A. Yes, sir, they are.

Q. 521. And the distances which are carried forward in [fol. 314] the right hand column are the round trip distances?

A. The round trip distances.

Q. 522. And the rates you have stated are the amounts the company pays to the operators of the carrying vehicles for the round trip?

A. That's right. A maximum of fifty cents and it ranges something near a cent and a quarter a mile and that which goes up over fifty cents, the employe pays the man himself in case there is an extra charge.

Cross-examination.

By Senator Muse:

Q. 1. Mr. Hagy, about how long would it take the average miner, after coming out of the mine, to wash the dirt off that he gets in that mine and clean up?

A. It takes a right little while.

Q. 2. About how long?

A. A whole lot of the time depends on where he washes. Over in our camp, we have pretty bad water.

Q. 3. I am assuming that he is trying to get clean, about how long would it take?

A. I have never timed myself. It would take several minutes.

Q. 4. Take half an hour, wouldn't it?

A. No, I don't think so.

Q. 5. The trip we made, didn't you take us to the highest point of the mine, where the roof was the highest above the passageway?

[fol. 315] A. The day that I took you over there, I took you to a section where there are five, six, seven, eight, nine, ten, eleven, twelve, thirteen cross entries off of the Main Parallel. The height over there is something near the same on that entire section as where I took you.

Q. 6. Isn't that section among the highest sections in the mine?

A. Yes, it is.

Q. 7. You didn't take the attorneys in the case over in the lower sections of the mine?

A. I took the attorneys in the same places that I took you gentlemen, with the exception of up in the face of Ten Right.

Q. 8. I know you took the attorneys to the same place. Did you take the attorneys to that portion of the mine that was the lowest?

A. No, I did not.

Q. 9. You took us to the most available part of the mine, didn't you, from the standpoint of walking, the most favorable portion?

A. As far as the standpoint of walking it, yes.

Q. 10. The part of the mine you took us to, was there very many places the attorneys could walk standing up or did they bend over as much as they could, with their heads down towards their knees?

A. They bent over much further than a man experienced would have bent, but it is true you had to bend over.

Q. 11. You mean in walking we bent over further than necessary?

[fol. 316] A. Oh, yes, I think so. Any one not experienced in being in a mine will bend further than one that has experience.

Q. 12. Weren't you walking either in front of me or just behind me when I ran into that cross piece and had a shock, jar, rather?

A. I do not remember where you were.

Q. 13. I remember the blow.

A. When we went up in Ten Right, there is a place about one hundred feet long that had headers across, and if I am not mistaken, that's where it was.

Q. 14. They are well named, headers.

A. Cross collars.

Q. 15. That's a correct name so far as I am concerned. These man trips the men ride, they are ordinary common coal cars?

A. Yes.

Q. 16. And they are left out in the open at night?

A. Yes.

Q. 17. You have snow up in your country,—some, I take it?

A. Yes, sir, it snows up there.

Q. 18. If it snowed six inches tonight and the men went out in the morning to ride one of these man-trips in that mine, would they find these cars with six inches of snow in them?

A. I don't believe they would if the mine is running regular. If it was Monday morning, it might be, if the snow was there.

Q. 19. Are you operating night shifts?

A. We dump our coal at night. The tipple at No. 1 runs both day and night.

[fol. 317] Q. 20. You dump the coal at night?

A. Yes, sir, and the cars are in transit hauling coal, and it wouldn't be reasonable to say the cars would be full of snow. In the winter time, it is true, if the snow melted, you might have some dampness in there.

Q. 21. Do you send the cars up there with snow in them for the men to ride in that man-trip?

A. I don't remember ever seeing any.

Q. 22. How about water?

A. You might see some dampness occasionally.

Q. 23. How about water, several inches of it?

A. I don't remember ever seeing one in a man-trip.

Q. 24. You have never seen one with snow in it?

A. Yes, I have seen some with snow.

Q. 25. How much?

A. Naturally, if it snowed, there would be some that fell on it.

Q. 26. An inch of snow is not the most comfortable place in the world to sit, is it?

A. The miner in the man-trip has always had the privilege of getting a cap-piece or wedges to ride on.

Q. 27. He has the privilege of getting that to sit on instead of getting his pants wet?

A. That's true.

Q. 28. No effort is made to keep these man-trips clean, is there?

A. No effort made to keep them clean, no.

Q. 29. You take the car in the condition in which you find [fol. 318] it and bring it up and the man gets in and protects himself the best he can against water or snow if it is in the car?

A. It is a rare thing there is any water on the bench. Down in the low part you will occasionally see water down

there. However, these cars are built with holes to drain the water out, but occasionally, some fellow stops that hole up to make it hold water and you will see water in there, an inch or two.

Q. 30. Do all of them have holes in them?

A. I don't know.

Q. 31. Just some of them.

A. I wouldn't answer, I don't know.

Q. 32. You made some answer yesterday, it was to this effect, as I recall, that no duty was required of the employe until he reached the face of the seam or until he reached his usual working place in the mine, with the exception of the machine man, who had to oil up his machine where he found it. Am I correct about that? Did you make some such statement or a statement to that effect?

By Mr. Richardson: May I interrupt just a moment? We would like to make a motion to exclude the questions that were addressed to this witness in reference to the discomforts in the man-trip cars as being beyond the scope of his direct examination and immaterial to the issues involved in this case.

By the Court: Overruled.

Q. 33. Look back on your notes if you care to. You read it off your notes, as I recall.

A. I don't have that on my notes, I don't think.

Q. 34. Is that statement correct?

[fol. 319] A. A man traveling inside, coal loader or company man, riding a man-trip, does not have any work to do under the contract we have been operating under until he gets to the place where he starts work.

Q. 35. How about the machine man?

A. The machine man does some work, setting the bits and such as that. That is covered in his cutting rate; that's my understanding.

Q. 36. Take a machine man that uses a motor and moves his machine with a motor, is it not a fact that after he gets a light, his lamp, in the same way that everybody else gets it, that he has to go on the yard and find the motor that's been assigned to him and bring that motor to the sand-bin; is that correct?

A. Yes, he does that.

Q. 37. He also goes to the oil house and gets a two gallon can of oil, does he not?

A. Yes, sir.

Q. 38. He gets that oil from out of his locker; that's correct, isn't it?

A. That's true.

Q. 39. Where it has been placed by the man in charge of the oil house?

A. That's true.

Q. 40. He then goes to the supply house and gets his bits for his machine, coal cutting machine, doesn't he?

A. Yes.

Q. 41. About how many bits does he get?

[fol. 320] A. That varies, depending on how much cutting he has and the conditions.

Q. 42. I understand that, but it runs between what figures?

A. They generally carry around about fifty.

Q. 43. These fifty bits will weigh how much a piece?

A. The fifty bits, fifty or sixty pounds.

Q. 44. About a pound a piece, about fifty pounds.

A. In the container.

Q. 45. What kind of container does he put them in?

A. He generally has a round box or round cylinder with a lid on top.

Q. 47. Is that supplied by the company?

A. Yes, sir.

Q. 48. He takes the fifty pounds of bits and the two gallon oil can and puts them on his motor, doesn't he?

A. Yes.

Q. 49. If his motor down in the yard is behind some other motors, he may have to shift any where from one to a dozen motors out to get his motor out in the clear?

A. What they do there, one man will take a motor and haul several machine men with him and they will go over all together. They do that for their own convenience.

Q. 50. Haul them where?

A. Over to the working section.

Q. 51. I am talking about a man who is getting his own motor. If his motor is in behind several other motors, he has to move those other motors out on the side track to give him clearance to get his motor out to go to the sand-bin?

[fol. 321] A. If he is taking a certain motor, he would.

Q. 52. Aren't they generally assigned the same motor?

A. The attempt is to give him a motor he is familiar with.

Q. 53. I am assuming that. He has to move these motors out in front if they are in front, between him and the sand-bin?

A. Yes, if they are in there.

Q. 54. And it would be unusual if he found his motor just the first motor, wouldn't it, be a plumb accident?

A. The way they generally do, they catch these motors as they come out of the mine, they get it right at the drift mouth, at the sand house. I have reference to No. 1 Mine now.

Q. 55. Is that usually true or an accident?

A. It's up to the man who is going to run the motor. If he is not there, probably he will have to do some shifting.

Q. 56. If he gets it when it comes out, he will have to be there?

A. Yes, he will have to be there. Some of them go in early for their convenience.

Q. 57. He has no way of knowing exactly what time it will come out of the mine?

A. He has approximately when the man-trip will run.

Q. 58. You certainly don't expect him to stand there and see when the man-trip is coming out, do you?

A. They have a few minutes range.

Q. 59. I am assuming that he comes out and finds his motor down the track with half a dozen other motors in front of him, he has to move that half dozen to get to the sand-bin, doesn't he?

[fol. 322] A. Yes, that's true.

Q. 60. He brings it to the sand-box and puts the sand in?

A. Yes.

Q. 61. How many places does he put sand in?

A. Four.

Q. 62. If they are empty, how much sand will it take?

A. Depending on the size of the box. It will take about three buckets. It should have some sand in it.

Q. 63. How much, if it is empty? I realize usually there will be some sand in it. Does each box hold about half a bushel of sand?

A. No, not hardly.

Q. 64. Three gallons?

A. Something like that.

Q. 65. If all four were empty, which I concede will seldom be the case, that will be twelve buckets of sand. Does he oil that motor?

A. He is supposed to put oil on it.

Q. 66. He takes oil out of the two gallon can and puts oil on the motor, in the oil cups, greases the motor up?

A. Generally greases the four journals.

Q. 67. Then he gets on it,—he has a helper, doesn't he?

A. Yes.

Q. 68. Then he and his helper get on it and come on up to the portal, approaches the portal, preparatory to going in. That is routine, isn't it?

A. Yes.

Q. 69. Who is it gives him the signal that gives him au- [fol. 323] thority to go back to his section?

A. He calls the dispatcher and asks the dispatcher for a right of way to a certain point.

Q. 70. If he is going to Parallel, he says: "Mister Dispatcher, I want to go to Parallel," and the dispatcher gives him directions, may send him a part of the way and hold him and then send him the rest of the way after clearance?

A. That's true.

Q. 71. He leaves his cutting machine up in his section or close to his section?

A. Yes, sir.

Q. 72. And goes up with his motor, if it is over in Parallel, he goes about twenty-three or twenty-four thousand feet, about four miles and a half, doesn't he?

A. Something near that.

Q. 73. Over there where he finds his cutting machine, when he gets to the cutting machine, he has to do what?

A. He gets his machine out and prepares for work.

Q. 74. He prepares his machine for cutting and then he hooks his motor on that machine and takes it up where he starts cutting, doesn't he?

A. Yes.

Q. 75. Tell me when his pay starts under your contract?

A. His pay is similar to a coal loader's pay, the way I look at it. These things are all included in the cutting rate.

Q. 76. Did you make the cutting rate?

A. No.

Q. 77. Have you ever sat in a conference that made the [fol. 324] cutting rate?

A. No. I said that was my understanding.

Q. 78. Have you ever sat in any wage conference?

A. No.

Q. 79. So you actually don't know what the rate includes, do you?

A. No, I have never been in a conference.

Q. 80. You are familiar with the rules of your company?

A. Yes.

Q. 81. Here are the rules for "Machine Men and Helpers." Show me in those rules where there is anything that requires that machine man to get his motor, to get his oil, to get his bits, on the outside, to bring his motor up, load on the bits and load on the oil, sand it, oil his motor, and go that distance of my illustration of four and a half miles to his machine. Show me that.

A. It has been customary for a man to do that with a mining machine as long as I have worked in a coal mine.

Q. 82. But you don't see anything in those rules requiring him to do that, do you?

A. I don't know.

Q. 83. Look and see.—You don't see anything in there that requires him to do all that, do you?

A. No, I do not. I haven't read it all yet.

Q. 84. Excuse me.

A. It says the machine runner is responsible at all times for the safety of the helper and it shall be the duty of the machine runner to see that his machine is in good repair, [fol. 325] *in good repair* and well lubricated.

Q. 85. That means the machine that does the cutting?

A. Yes.

Q. 86. But I am talking about his motor that he has been working with on the outside. The only thing in those rules in regard to his duties is in relation to that cutting machine, isn't it?

A. Yes, I take it that is the way those rules are to be interpreted.

Q. 87. Why is that motor brought out?

A. That motor doesn't have to be brought out, and often times the machine man will get that motor over on his section, ride a trip of cars through the mountain.

Q. 88. Is that very frequently done?

A. It has been. I wouldn't say it is done frequently.

Q. 89. That's unusual, isn't it?

A. No, they do it right along.

Q. 90. The customary procedure is the one I have outlined?

A. Some of them are. Frequently, they ride through.

Q. 91. You stated yesterday, as I recall, and stated today that a machine man began to perform duties when he reached his machine. What do you call getting the motor outside, going to the sand-bin and getting the sand, getting the fifty pounds of bits, sanding it, oiling it and traveling four and a half miles? What do you designate that?

A. My opinion—my experience has taught me that that has been customary and that the cutting rate takes care of that time.

[fol. 326] Q. 92. You don't know anything about the cutting rate, do you?

A. I told you that was my understanding.

Q. 93. As a matter of fact, some of the men don't do that, do they?

A. Don't do which?

Q. 94. The things I have described. Some of them use a pony truck?

A. Yes, and the reason they use a locomotive, the grades are right steep and it is not safe to use a pony truck.

Q. 95. How far do they have to carry these fifty pounds of bits, after they get them, to the place where they put them on the truck?

A. The man who goes to work on a cutting machine goes to work on an off-shift when nobody is on there, and they ride as far as they can. They are meeting the traffic coming out, the man-trips, and some times they carry those as far as—well, I don't know what point.

Q. 96. Two hundred feet any way?

A. Some of them carry them more than two hundred feet.

Q. 97. Carrying fifty pounds two hundred feet, don't you consider that work?

A. It is not productive work.

Q. 98. Not productive to him, he doesn't get paid for it?

A. He is not producing any coal.

Q. 99. He is getting ready to produce coal, isn't he?

A. Yes.

Q. 100. You have got some men on the cutting machine [fol. 327] that you pay by the hour, haven't you?

A. Yes.

Q. 101. Their time starts when?

A. Those fellows, the ones over at No. 1 Mine, that's the ones you are talking about, we have three crews over there, I believe, two that cuts in Bear Wallow and one that cuts in No. 4 Mine, and the one that cuts in No. 4 Mine work- by the shift and have five or six hours work to do.

Q. 102. Their time starts when?

A. Whenever they—the way we have there, we have an arrangement with those fellows, they quit when they get through cutting.

Q. 103. They start their shift when they start cutting coal?

A. No, those fellows, after the day shift is over, those machine men come down and get a motor and ride over to where their machine is and start cutting, and when they get through, they stop, and they get a shift for it.

Q. 104. Do you start counting their time when they start work cutting that coal?

A. Yes. They get paid by the ton, and don't get paid until the first ton is cut.

Q. 105. I am talking about the hour men. Do you start counting their first hour when they do their first work cutting coal?

A. Yes, sir.

Q. 106. And those men also have to do the other work I have described?

A. Yes, just like a motorman.

Q. 107. And you start counting his hours when he starts [fol. 328] cutting coal, don't you, regardless of when he quits?

A. When he quits, he gets paid for what time he works.

Q. 108. These man-trips, you said that they were for the convenience of the men in the mines, as I understood you to say?

A. They are run for convenience, both to the Company and the men.

Q. 109. Do you know of any mine that's comparable to the Jewell Ridge Mine where they do not have man-trips but let the men walk in three or four or five miles?

A. Not at the present time.

Q. 110. How long since you have known men walking five miles in a mine to get to work?

A. I haven't known men to walk five miles in my experience but I have known them to walk two miles back several years ago.

Q. 111. Did you say anything in your evidence on yesterday about the man-trips being for the convenience of the company? Didn't you say they were for the convenience of the men?

A. I don't believe I said anything about it being for the convenience of the company. They are for the convenience of the company.

Q. 112. You put it for the convenience of the men on yesterday?

A. Yes, sir.

Q. 113. But they are also for the convenience of the company?

A. Yes, sir, in my opinion.

Q. 114. Do you think these miners would work in that [fol. 329] mine if you didn't have man-trips?

A. They would work where the coal was probably more easily mined.

Q. 115. And where there were man-trips. If you posted a notice tomorrow morning to this effect: Hereafter there shall be no man-trips in the Jewell Ridge Mines—Employes going in the mine may walk or get there the best way they can,—how long do you think your mine would be operating?

A. Well, personally, I imagine the fellows would go where they could get to their work the easiest and make the greatest wages.

Q. 116. Do you think that would be at Jewell Ridge?

A. No. I think a man-trip is for the benefit of the company the same as it is for the men, so far as the man-trip is concerned.

Q. 117. I wanted to be certain of that because I didn't recall your making such a statement on yesterday.—Mr. Hagy, I notice that in Parallel Fourteen East, and that is, by the way, where the lawyers went, our group, at least, that it is 25,460 feet from the portal. How long would it take a man to walk that distance, going to work?

A. It would take a fellow, I don't know, you would have to guess at it, a fellow walking that far, you might compare it with a fellow walking outside and then include your extra labor that it might take, extra energy it might take to walk a track such as that. I would say it would take considerable time to walk that distance.

Q. 118. Give me an idea how long it would take to walk [fol. 330] that distance?

A. It would take over an hour.

Q. 119. How long does it take you to run it with a man-trip?

A. You have some figures on that.

Q. 120. Would you mind turning to them, Parallel Fourteen East.

A. It takes forty-six minutes to the Parallel man-station with a locomotive with a man-trip.

Q. 121. One way?

A. One way. That's stopping and letting men off and on.

Q. 122. That's by power on track?

A. By power on track.

Q. 123. How long do you think it would take for a man to walk that? You guessed that it would take something like an hour.

A. It would take him over an hour.

Q. 124. That man-trip is going to move twice as fast as a man could walk, isn't it?

A. I would say—I couldn't tell you how long it would take. I don't know.

Q. 125. I understand that but you have been working around mines all your life and have been in that mine time after time. Give me your best idea how long it would take a man to walk it, keeping in view it takes forty-six minutes to ride on the man-trip with an electric motor. He certainly won't walk any more than one-half as fast as that man-trips runs, will he?

A. No, it will take him right much over an hour to walk it. It would take him somewhat longer, I assume, than it would outside.

Q. 126. If he went one-half as fast as it runs, it would [fol. 331] take him an hour and a half each way?

A. That's what I mean.

Q. 127. And he would have to do some powerful walking to walk one-half as fast. What would he do if he was carrying tools?

A. I haven't seen any one carrying tools. I don't know what he would do.

Q. 128. Let me see—maybe I don't understand you,—are you contending that the company has no interest as to how these men get there?

A. Yes, they are. They are very much interested in how a man gets there. If a man has to walk there, he isn't

worth anything when he gets there. The idea is to get him there able to work.

Q. 129. You don't want him to get there tired?

A. No. That's to the company's advantage, the way I feel about it.

Q. 130. So, really these man-trips are run by the company so they can get the men to the working places in shape to work; isn't that true?

A. That's true.

Q. 131. And they have been running man-trips over there for many years, haven't they?

A. I don't know. They were running man-trips when I came there.

Q. 132. As a matter of fact, if a man comes up now and misses a man-trip, gets there late, you see that he gets in there, don't you?

A. I see that he gets there.

[fol. 132] Q. 133. If a man comes up and says "Mr. Hagy, I have missed my man-trip," you don't say "Start out walking"?

A. No.

Q. 134. You put him on something to carry him?

A. I do, to get him to the working place.

Q. 135. How about along the side of the track? It's pretty rough, isn't it?

A. In some sections of the mine, it is rough. Others have been cleaned up, the section where you gentlemen were on, all that section over in there is cleaned up, what I consider in really good shape. On the main line, however, coming back, there is lots of gob and crushed along that falls off the cars and there are places that doesn't have clearance but that was going through those roads and things like that. It is true that some don't have clearance but in all our development work, we try to maintain clearance.

Q. 136 If you had no man-trips and started two or three or four hundred men walking in that mine, it would be a pretty dangerous situation, would it not?

A. It would if you were hauling coal, because you don't know which way the men are going.

Q. 137. If it took an hour and a half, it would mean during that travel time you couldn't move any cars, wouldn't it?

A. No, not on the main line where the main haulage is.

Q. 138. So, as a practical proposition, you couldn't operate that mine unless you had man-trips, could you?

A. Well, I wouldn't want to say that you couldn't. We have a lot of openings where men can get in but it wouldn't [fol. 333] be practical to try to operate the mine, I don't think, having to walk from the driftmouth in. We don't tell a man he has to ride a man-trip but we like for him to ride it and want him to ride it.

Q. 139. And you expect him to ride it?

A. If he does any good, he has to ride it.

Q. 140. If he performs any reasonable work, he has to ride it, hasn't he?

A. Yes, sir, I agree with you.

Q. 141. You made some statement yesterday or several times, as I recall it, on this map here, which I don't understand very well, about a lot of openings where men could just walk in, driffs, you call it?

A. Yes.

Q. 142. In Mine No. 1 you pointed out probably—I will say several, maybe a half dozen or more places, where you could walk in?

A. Yes.

Q. 143. You did that, didn't you?

A. Yes.

Q. 144. In one place you mentioned where two cars are customarily parked on the mountain and the men walk down?

A. Yes.

Q. 145. Does your company expect the men to use these drifts to walk in or to customarily use the main portal that we went in?

A. It's optional with the man, whichever he wishes to use.

Q. 146. The men who use these openings you described are men who live on the mountain side, pretty convenient to these openings?

[fol. 334] A. Yes.

Q. 147. You have got one hundred and seventy-one houses at No. 1. Certainly it wouldn't be pratical for any of those men to use any entrance except the main portal, would it?

A. The houses were built, I think, as nearly and as closely to the driftmouth as was permitted from the lay of the land there.

Q. 148. Do you mean the main entrance?

A. The lamp house, the main entrance. When the camp was built, the mine was young. The camp was built when it wasn't very far inside from that No. 1 portal.

Q. 149. Do you expect any of these men who live in the one hundred and seventy-one houses to enter the mine any way except through that main drift?

A. If we were to open another drift and prepare a way for a man to get there, I would think that it would be—that a man would prefer—any way, he would prefer getting to his work the easiest way.

Q. 150. Any way, you haven't done it yet?

A. No.

Q. 151. And these men that you haul in, that you pay their fare to come to work, these vehicles that they ride in, that you pay the fare for, put them off at the main portal, don't they?

A. Yes, some do,—No, I believe they all do.

Q. 152. And that's true down at No. 2, isn't it?

A. Yes.

Q. 153. The men whose transportation your company pays get off at the main portal at both mines?

[fol. 335] A. Yes, as near as they can get.

Q. 154. Are there any sanitation facilities of any kind in that mine?

A. The sanitation facilities are about the same as in all coal mines.

Q. 155. You have space from the time you enter, you have ground there, but you have no sanitation facilities in there whereby men go to meet the calls of nature?

A. All mines are just alike. This is just like all of them.

Q. 156. And all of them are about like the great open forest?

A. They go out where no one is working in an old breakthrough some where.

Q. 157. You mean they are supposed to?

A. If he has any cleanliness or any feeling that he should do that and get away from everybody, he should. That would be up to the man himself.

Q. 158. Do you have gnats and things like that flying around in the mine?

A. Occasionally.

Q. 159. In some sections, you have plenty of them, don't you?

A. Gnats go in there in the fall. We have lots of them when it commences getting cold outside.

Q. 160. How about in the summer time?

A. You have them in the summer time.

Q. 161. You have them all the year around?

A. Occasionally you find a place that has gnats in it.

Q. 162. And when the men eat they have to eat fighting off [fol. 336] gnats, don't they?

A. No, I don't think that.

Q. 163. Is that true in any section of that mine?

A. No, I don't think it is. There might be some sections, but you find gnats in any coal mine I ever worked in.

Q. 164. You described that lamp there. The miner pays rent for that lamp?

A. Yes, he pays rent.

Q. 165. He pays eight cents a day?

A. Yes. He doesn't right now.

Q. 166. He did until the War Labor Board relieved him of it?

A. That's true.

Q. 167. And that hasn't been so many weeks ago?

A. When he used carbide, he furnished his carbide and when they changed to electric lamps, the lamps were all leased.

Q. 168. Leased from who?

A. The manufacturer to the Jewell Ridge and Jewell Ridge charged the coal loader or inside man eight cents a day for the use of that light.

Q. 169. Do they charge the company men eight cents a day, too?

A. Everybody is charged the same.

Q. 170. Everybody who gets a light pays the same for it?

A. Yes, or did.

Q. 171. Until the War Labor Board made the ruling on it?

A. Yes.

Q. 172. The Cardox you mentioned, that's a long pipe kind of an arrangement with some kind of gas, that, with [fol. 337] an electric spark, it explodes?

A. Yes, the heat expands and shears a little disk and lets the gas out and shoots the coal.

Q. 173. I believe it takes an augur, which I tried to use and couldn't, that bores the holes in the coal, bores three?

A. Bores two, ordinarily.

Q. 174. How much does he pay for that Cardox?

A. Forty-two and a half cents.

Q. 175. A piece?

A. Yes.

Q. 176. So, if he shot off two holes, he would pay eighty-five cents for shooting that coal down?

A. Yes, that's what he would pay for the two Cardox.

Q. 177. Are those man-trips dangerous?

A. I don't think they are very dangerous. They haven't proved that way with us.

Q. 178. Has anybody got hurt on them?

A. Since I have been there, I recall about three.

Q. 179. You have been there something over a year, I believe?

A. It will be two years in February.

Q. 180. This coming February?

A. Yes, sir.

Q. 181. And three men have been hurt on man-trips in that time?

A. Three that I can remember of.

Q. 182. How were those men hurt?

A. If I remember right, the cars were going around a curve and he was sitting in a car and had his arm out like [fol. 338] this, and the car on the other side—let me show you, it was something like this, the cars were coming like this and the cars were coming around a curve and he held his arm over and mashed it between the corner of that car and the corner of this car. That's one, the most severe. The other two I don't remember. One had a rib broken, and I don't remember what happened to the other fellow.

Q. 183. Do you remember when that electric trolley broke and scared some men out of their wits and injured them a little?

A. I remember that. I didn't see it. I remember when it happened.

Q. 184. I didn't mean, Mr. Hagy,—my question was not the men you had seen get hurt but the men you knew of getting hurt on man-trips, whether you saw them or not. You heard about that wire breaking over there?

A. Yes. I remember about the wire.

Q. 185. One man got his neck burned and still has a scar on it?

A. I don't know.

Q. 186. Was that before you got there?

A. I don't know who was hurt. The only thing I am going by is the reports.

Q. 187. Did that take place since you got there?

A. Yes, but I don't know who was hurt.

Q. 188. That was at Jewell Valley?

A. That was at Jewell Ridge. The wire fell in the car, fell on the corners of the car.

Q. 189. And burned some men, didn't it?

A. I don't remember.

[fol. 339] Q. 190. Don't you remember that anybody was hurt at all?

A. No, I do not remember. I heard some talk of it, and some fellow mashed his ribs, but I don't remember who the man was.

Q. 191. You didn't include that?

A. I did not include that. It was not reported as an accident and I don't know how bad it was and don't know how serious it was or who it was.

Q. 192. Are you sure it wasn't reported as an accident?

A. I don't remember it being reported.

Q. 193. You really don't recall?

A. No, I don't recall.

Q. 194. Have you had any such similar experience at Jewell Valley on the man-trip with the wire breaking?

A. No, I don't remember.

Q. 195. How long does it take a man to get his lamp? I think I misunderstood what you said.

A. To get his lamp?

A. Yes.

A. After he gets to the window, it doesn't take but a second or so.

Q. 196. Getting to the window is the point I am interested in?

A. If the men get there kind of scattered out, no one hardly ever has to wait in line, but if all these busses that we haul these men in come in there, some times they have to wait five or ten minutes before the whole line passes.

Q. 197. After they get their lamp, if they have tools, they go to the blacksmith shop and get the tools?

[fol. 340] A. Yes, they go to the blacksmith shop and get the tools and put them in the tool-car. They look after their own tools?

Q. 198. They have to pay for having their tools sharpened?

A. They did. They do not now.

Q. 199. The reason they don't is because the War Labor Board relieved them of that?

A. That's what I understand.

Q. 200. Prior to that, they paid one-half of one per cent for the blacksmithing?

A. I don't remember that that is the exact figure. It was a small sum.

Q. 201. One-half of one per cent if a man is making two hundred dollars a month costs him $1.00 a month?

A. Yes.

Q. 202. If he has any tools, he gets them and puts them in the tool car?

A. Yes.

Q. 203. The reason you required his tools to be placed in the tool-car was because it would be a very dangerous thing to ride on a man-trip with tools in the same car with the men?

A. Absolutely, it wouldn't be considered safe.

Q. 204. Why would it be dangerous?

A. Several things might occur. A fellow start to get out and hit his leg against an augur or catch his leg, cut it, or hit his arm in some movement. It might be a slate fall or something like that might happen. That occurs sometimes and the trip might want to stop suddenly.

Q. 205. A slate fall in the cars?

[fol. 341] A. No, ahead of him or something like that, or maybe somebody flag the trip or he might stop sudden and the man hit his leg against a pick or something like that, trying to move to see what happened.

Q. 206. If that slate might fall in front of the car, it might fall in the car, too, mightn't it? You can't tell when slate is going to fall, can you?

A. No, you can never tell. That's possible for it to fall in the car. I never had it happen in my experience.

Q. 207. You have heard of that, haven't you?

A. I have heard of one accident like that.

Q. 208. When you ride in that mine, Jewell Ridge, particularly, at various points somebody has marked "DANGER," or some word that indicates danger,—you have to look after that roof up there?

A. Yes, you have to look after the roof.

Q. 209. And also at various places, the roof is marked, calling attention to this particular rock?

A. Calling attention so when the mine foreman goes along, he examines it. If he thinks it should come down, he takes it down. You don't take all loose rock down but lots of times it is marked to call the attention of the foreman so he can keep a close watch on it.

Q. 210. The way the man-trips would run at Jewell Ridge, —I understand it is different at Jewell Valley,—you usually had two going in?

A. We had two long trips going over to the farthest side of the mine and these cars would be cut off, going to various sections, and picked up by the gathering motor.

[fol. 342 Q. 211. The last four cars, say, that you put the men in, those cars should go off at the closest or the first place, shouldn't they?

A. Yes.

Q. 212. So as to keep them all together?

A. Yes.

Q. 213. When that man-trip reached the particular section where the men in the last four cars were working, you cut it off and go ahead and maybe the next four cars you would cut off for the next section and cut the tool car off also?

A. Yes, sir.

Q. 214. So the train was divided up into cars going to certain sections and a tool car going to certain sections?

A. That's right, so many cars, enough to haul the men.

Q. 215. And the men would get in the cars according to the sections so as to stay in when it was shifted off?

A. Each man knows, just like when you get on a train, he knows which car to get on.

Q. 216. With the cars for each section, there is a section foreman who rides in those cars, isn't there?

A. Just about a section foreman for each section that goes to a certain portion of the mine.

Q. 217. Does the section foreman ride in the cars with his men?

A. Yes, that's the custom.

Q. 218. I believe you had the rule over there that no more than seven men should ride in a car?

A. I don't remember the rule. I don't think we have any [fol. 343] printed rule on it. I don't remember ever seeing

it, don't remember having any printed rule on it, but we have tried to hold it down so there wouldn't be too many men in a car.

Q. 219. The men generally understand it is seven men to a car?

A. I don't know. I believe some of them over at No. 2 talked about eight. So far as I know, we don't have any rule.

Q. 220. If too many men get in one car, the section foreman in charge of that car will tell them to get out, won't he?

A. For safety reasons, he does.

Q. 221. He does tell them to scatter out and get in different cars?

A. For safety reasons, he does.

Q. 222. If the men indulge in horseplay, then the section foreman in charge of those men make them desist?

A. It is rare that you ever have it. If he did, I would say he would. He would advise them if they didn't quit horseplaying, a fellow might get hurt, might step where he shouldn't, might fall down,—as a safety measure.

Q. 223. And the section foreman might give him a discipline slip?

A. He might. I don't remember one ever being given.

Q. 224. Certainly one would be authorized?

A. Yes, it's in the rule book.

Q. 225. If one of the men got on the train while it was moving or got off while it was moving, he would be disciplined by his foreman, wouldn't he?

A. Yes, that would be a dangerous practice.

[fol. 344] Q. 226. He might be given a discipline slip for that?

A. He would be given a discipline slip if he was doing something that would be considered dangerous, where he might hurt himself.

Q. 227. Do the section foremen ever give any instructions to the men about the day's work while riding on that man-trip?

A. Not necessarily. The- tell a man any time, may tell him at home or in the evening, something he might do when he gets to his working place.

Q. 228. And he might tell him about it on the man-trip?

A. Yes, he might tell him any where. I often see a man on the hill and I tell him something to do when he gets to his working place.

Q. 229. But the section foremen do give the men orders while riding the man-trip in regard to their work?

A. They can't give a man many orders about a working place until they get in the place. Practically all the orders given to a coal loader are given in the working place. A section foreman doesn't know the condition of the place until he gets into the different places. It is different than it was the night before. It has a fresh cut and the condition of the place has changed from the condition it was the day before. That's where most of the orders are given.

Q. 230. But some of them are given on the man-trips, aren't they?

A. If a fellow comes up and asks for advice, what must I do, the section foreman will tell him.

Q. 231. And if he is sitting in a man-trip, riding in a man-
[fol. 345] trip, doesn't the section foreman give instructions as to his duties while making that trip?

A. Yes, he gives him instructions what to do when he starts work. Occasionally, he gives somebody orders. I have ridden a man-trip and some times you see him talking to somebody, but that's rare. He doesn't talk much to the men in riding on the trip.

Q. 232. That's because of the noise of the trip?

A. Well, ——

Q. 233. How fast do these man-trips run?

A. If you time them they are not going as fast as you think they are by riding in them. Figure it yourself. That longest time is forty-six minutes and that trip stops four or five times in the distance to let me off. If you run a locomotive too fast, it throws the coils. A motor won't run very fast unless you let it drift down hill. A lot of these motormen hauling man-trips right now don't make over six miles an hour.

Q. 234. How fast would you say the trip was going that we were riding in?

A. About seven. The speed of that motor is eight, going up hill.

Q. 235. It can go faster down hill?

A. Oh, it will drift, but they are not going as fast as a fellow inexperienced,—they won't go as fast to a man experienced seemingly as to a man not experienced.

Q. 236. I imagine that's true. You mentioned something about having a man-trip station inside the mine at No. 1, for instance. That's very close to where the magazine is for each section?

[fol. 346] A. Some where fairly close.

Q. 237. Now, the man, the miner or employe, in some sections, puts up a disk with his number on it, and in other sections, doesn't, depending on the section foreman?

A. Yes, depending on the section foreman.

Q. 238. After he gets his powder and detonators at No. 1, he sets out walking to his room?

A. To his working place.

Q. 239. And they have to walk as high as fifteen hundred feet, don't they?

A. Yes.

Q. 240. In walking that fifteen hundred feet——

A. That's about the maximum, fifteen hundred feet.

Q. 241. In Parallel, assume that he was working where I said a few minutes ago, if I can get it back, Parallel Fourteen East, when he leaves the man-station for Parallel Fourteen East, how high is the roof back to where he would be working?

A. In that particular section, all along the entry, you have fairly high roof.

Q. 242. How high? What do you mean?

A. It runs around three to four feet of draw rock above the coal.

Q. 243. Are you talking about the main entry?

A. Yes.

Q. 244. After he leaves the main entry and starts in to the room, how high is it?

A. The coal is something like forty-six to fifty inches high and we try to timber and hold the draw rock and if we don't, it comes up maybe a foot or two of draw rock.

[fol. 347] Q. 245. That timber itself is how thick?

A. Three or four inches.

Q. 246. What is the maximum height in that section, walking from the man-station to where he is working, in that section?

A. He would have fairly good height up to the mouth of his room. His room can't be over three hundred feet long.

Q. 247. Fairly good height doesn't mean anything to me. Give it to me in inches?

A. It would be from sixty to sixty-five inches on up where the draw rock has come. Most of that entry you refer to it run about four feet of draw rock that was taken but the rooms driven off of it, of course, we don't take it.

Q. 248. How high are those rooms?

A. They run around forty-six to forty-eight inches, ordinarily.

Q. 249. That means a man walking there has to walk with his back or whatever part of his anatomy is the highest not over forty-six inches high?

A. Something like that, forty-six to forty-eight.

Q. 250. If he is a six foot man, he has to get two feet of his anatomy down lower than natural. How far do they have to walk in that position?

A. The maximum length of the room is three hundred feet; varies from nothing to three hundred.

Q. 251. You said you took us over to Parallel. That's one of the highest roofs in the mine. What's one of the lowest?

A. Number One, I imagine it would be around, down in No. 1, the lowest portion of the mine doesn't have much tim-
[fol. 348] ber; you generally have draw rock and the coal runs around forty-six inches with the draw rock over it.

Q. 252. How far does a man have to walk down there and keep below forty-six inches?

A. Some of those cross-entries, a few places down there where the entries are long, he would have to walk about eight hundred and fifty feet, maximum.

Q. 253. The maximum would be about eight hundred and fifty feet, in a space not more than forty-six inches high?

A. Yes.

Q. 254. That's Jewell Ridge. Down at Jewell Valley, what's the situation there?

A. At Jewell Valley, the Federal Mine Inspector's report was forty-four inches. Our engineers run some where around between forty and forty-two inches.

Q. 255. Give us the lowest section?

A. The lowest section would be around about thirty-six inches. However, there are a lot of rolls in the roof. One of them mght come down even lower than that but it would be only a distance of twenty-five feet maybe.

Q. 256. How low could it come down?

A. It can't come any lower than twenty-eight inches. On most of those sections, the mining machine runs around

thirty-five inches above the rail where they use standard machines and it can't be any lower than that, but we do have one section that will come down to thirty-six inches.

Q. 257. That means the man is walking there in a space not [fol. 349] more than thirty-six inches high?

A. There is one thing about low coal, when a man learns to walk in that low coal, he walks with his hands as much as his feet. I can walk all right in there.

Q. 258. You mean he gets down on all fours?

A. No, I get a stick or cap-board and I can get along about as fast as in higher coal.

Q. 259. You have to be accustomed to it, though.

A. Yes, sir, to do it.

Q. 260. Did you see me scrambling around over there?

A. Yes.

Q. 261. I wasn't accustomed to it?

A. No.

Q. 262. How would a man carry his tools, under such conditions?

A. The motorman always hauls the tools in a low seam like that, unless he wants to go to get a hammer or something like that, but if he wants to have a full set of tools, he will have a tool car.

Q. 263. How about his dinner-bucket and suppose he took a pick out to be sharpened and took it back the next day?

A. A lot of times they leave it in the car and a lot of times, rather than wait for the car to bring it to him, he will carry it. A pick is a little dangerous, but it serves also as a walking stick.

Q. 264. It's not a very desirable walking stick, though?

A. No.

Q. 265. Over there, you say you have one low motor?

[fol. 350] A. No, I was talking about a low vein machine.

Q. 266. A cutting machine?

A. Yes.

Q. 267. Are all the motors you have there the same height?

A. Yes.

Q. 268. Don't you have one motor you put a steel top on or metal top?

A. No, you are talking about No. 1. At No. 2, the motors are the same height, the haulage motors thirty-six inches high and the gathering motors twenty-eight.

Q. 269. How do you get a motor into this real low place?

A. We have to take the roof — if it comes down under twenty-eight inches.

Q. 270. But down to twenty-eight inches, you can get the motor under it?

A. Yes.

Q. 271. You have had to put some special top on to get the motor under, haven't you?

A. No, not at No. 2. At No. 1, we put a top on over there, and also one motor come- there that was real high and they cut it down and made a ten ton motor out of it. That's that forty-six inch section down there. Of course, there is other places still higher than that.

Q. 272. A man going out, after he has finished his day's work in No. 1, he comes back to his man-station for his section?

A. After he quits work, leaves the working place, he comes down to the man-trip station.

Q. 273. Turns in his powder, if he has any left?

[fol. 351] A. Yes, if he has any left, he turns in his powder.

Q. 274. In the morning when he comes in, he gets his powder at that station before going to his room?

A. Yes, sir.

Q. 275. Powder and detonators?

A. Yes.

Q. 276. When he comes back in the evening, if he has any powder left, he brings his powder and detonators back?

A. Yes.

Q. 277. And checks in any powder or detonators he has left there?

A. Yes, sir.

Q. 278. Now, he leaves an order for the number he needs the next day?

A. He does.

Q. 279. He waits there for a man-trip at his station?

A. That's true.

Q. 280. And you get those men in much faster than you get them out, don't you, or did?

A. Well, there were times when they were late, a minute or two, as I mentioned before, when some men was a little late, wanted to finish a car or something, they never ran

off and left him. Now, of course, they are supposed to run them on time.

Q. 281. Didn't you, prior to November 3rd when the men came back on duty, didn't you give priority to load trips with coal coming out, didn't you give priority to the coal cars?

A. No, I did not.

Q. 282. Didn't you hold those men on side tracks, so to [fol. 352] speak, until the coal came out?

A. There was a mix-up one day. I was not in the mine——,

Q. 283. I understand anything can happen once. I am talking about the general policy.

A. No, that isn't the general policy at all. Unless somebody made an error or something like that, it didn't happen. I know one day, some one might have mentioned it to you, the dispatcher had to go home and put a new dispatcher in and he let some cars come over when he already had some cars on a side track, but so far as giving priority, there wasn't any such thing done unless it was a mishap or something.

Q. 284. Were you not more interested in getting the coal out than you were in getting the men out when the day's work was done?

A. No, I was more interested in getting the men out and I made an effort to do that. I wanted them out and I never gave an order at any time to sidetrack a man-trip for a load of coal.

Q. 285. You never gave an order but was it customarily done?

A. No, I don't think so, unless somebody got mixed up. I don't think it was done on purpose because I made an effort to try to get the men out on time. I don't believe in holding them in there.

Q. 286. Since the contract of November 1st, between Mr. Ickes and Mr. Lewis, you have been getting your men out of the mines much quicker, haven't you?

A. We had to change the layout altogether and what we did was to change all our coal hauling and everything like that.

Q. 287. My question was since the contract between Mr. Ickes and Mr. Lewis of November 3rd, you have been [fol. 353] getting the men out of the mines quicker than you did before?

A. We don't wait on any one now. If somebody misses a trip——

By Senator Muse: Read the question, will you?

Question No. 287, as reported, was thereupon read.

A. Yes, we have been getting them out. If a man isn't there when quitting time comes, the man-trip runs, and we make provisions to get that man out that misses the trip. The section foreman will stay until he gets that man. We changed our haulage system.

Q. 288. Don't you get them out quicker primarily because you are running a man-trip with gathering motors from each section?

A. It takes as long to run the man-trip, so far as time is concerned, but we have less interference by changing the main line haulage. When a man starts out of there now, he doesn't have anything to block him.

Q. 289. Why?

A. We changed the main line haulage.

Q. 290. You have gotten the coal cars out of the way?

A. We start at the tipple and dump all we had left over from the day before. That's the reason we are not going to have any snow left in them.

Q. 291. You said there was less stoppage. What did you stop for?

A. When we were hauling the longer trips, the motor would have to stop and pick up a car from this section and another from that section. Now they all come out together, [fol. 354] which I don't believe is as safe.

Q. 292. Now, instead of switching and getting all the cars together in one or two long man-trips, you use gathering motors and have a man-trip for each section?

A. Yes.

Q. 293. And you are getting the men out much faster?

A. No, not faster, but they get them out sooner because they don't have the delay.

Q. 294. Maybe "faster" is not the correct word. You get them out much sooner?

A. Yes.

Q. 295. You get them in sooner?

A. Yes. Those far away don't get as much time at the working place.

Q. 296. I didn't understand you.

A. The ones that ride a long distance from the drift don't get very much time at the working place. They are cut short. They don't hardly have seven hours right now.

Q. 297. Don't you take them in sooner? Take parallel,—that's the one I am claiming kinship with,—take a man working in Parallel section, the way you are working now, you send a man-trip to Parallel section?

A. Yes.

Q. 298. That trip has an open road, doesn't it?

A. Yes, he has an open road.

Q. 299. He gets to the parallel section quicker and sooner than he would if he was on the old man-trip?

A. I wouldn't say that, because formerly, if he didn't [fol. 355] have anything to hold him up, he got there as quickly as he does now.

Q. 300. Formerly you had to stop and cut those five cars off?

A. That was the delay, that was the only delay they had.

Q. 301. Would you mind—then you go to another section and cut off some more and you did that several times, and that caused a delay, didn't it?

A. Yes, a minute or two, a delay each time he made a shift.

Q. 302. Now you don't have that delay. You fix the man-trip up and it goes to Parallel; isn't that true?

A. Yes, sir.

Q. 303. When the day is over, you reverse the process and out he comes from parallel. As a matter of fact, you have wrecks on that Main haulage now and then, don't you?

A. We had one one day.

Q. 304. You had one that I know something about?

A. Yes, sir.

Q. 305. How long did we sit there, Mr. Hagy?

A. About forty-five minutes. I don't remember exactly. That was due to a green man being on the locomotive that day and he had a mishap and let the motor run down and wreck some cars. That's part of mining. You have that in any kind of industry.

Q. 306. I understand that. I enjoyed it, sitting there.

(Witness stands aside.)

(At this point, it being 5:00 o'clock P. M., Court adjourned until tomorrow, Saturady, November 20th, 1943, at 9:30 o'cock A. M., at which time the trial of this case was resumed.)

[fol. 356] J. A. HAGY, a witness heretofore introduced on behalf of the plaintiff, being recalled, testified as follows:

Cross-examination.

By Senator Muse:

Q. 307. Mr. Hagy, the operation of Jewell Valley, which is spoken of as Mine No. 2, is similar and alike to the operation of No. 1, with minor exceptions; that's true, isn't it?

A. No, I wouldn't say that. The natural conditions are quite different. The seam of coal is different.

Q. 308. I recognize that, but you have the man-trips down there at No. 2?

A. Yes, the same as we have at No. 1.

Q. 309. And you have the machine cutters down there?

A. Yes, sir.

Q. 310. The operating conditions are somewhat different because of the different height of the coal seam?

A. That's true.

Q. 311. But otherwise, it is very similar to No. 1?

A. In many respects.

Q. 312. In most respects?

A. In most respects, I will say.

Q. 313. And such minor variations are because of the difference in the seam and somewhat different working conditions?

A. That's true.

Q. 314. But as an overall picture, it is very similar to No. 1?

A. Outside of the natural conditions, they are very similar.

Q. 315. The same type of work?

A. Yes, at each mine.

[fol. 357] Q. 316. I believe you said yesterday that the labor cost of producing coal at Jewell Ridge was approximately eighty per cent?

A. I did.

Q. 317. Do you know whether or not the average labor cost in the industry as a whole is sixty-five or approximately sixty-five per cent?

A. No, I do not. I do not have the figures on it.

Q. 318. Are you certain that your figures are correct of eighty per cent for Jewell Ridge?

A. Yes, approximately correct. I took the cost over about a four months period. The labor cost and the total cost in our office and it runs around eighty per cent.

Q. 319. For that four months period?

A. Yes.

Q. 320. Whether or not that four months period is a typical period or not, you don't know?

A. I took it for the last four months.

Q. 321. What it would have been for the four months preceding that, you don't know?

A. No.

Q. 322. And what for the preceding eight months, you don't know?

A. I took the figures for six months.

Q. 323. And the average cost for the industry, so far as you know, may be sixty-five per cent?

A. I do not know what it is.

Redirect examination.

By Mr. Richardson:

[fol. 358] Q. 1. Mr. Hagy, on cross-examination yesterday afternoon you were asked some questions about the machine men, I mean the men who operate cutting machines. Are those cutting machines self-propelled?

A. Yes, the cutting machines are self-propelled.

Q. 2. Ordinarily speaking, is a motor required for use in connection with a cutting machine?

A. No, a motor is not used. However, on the Parallel section, we have steep grades over there and we use motors over there with the machines to keep the machine from running away down the steep hill. The locomotive has better brakes than the machines do and we use a locomotive in that section of the mine, all the Parallel section, to keep the machines from running away.

Q. 3. The Parallel section is a portion of the No. 1 Mine?

A. That's true. It is a portion of the No. 1 Mine.

Q. 4. Do you use motors in connection with the cutting machines any where else except in that particular area?

A. Not to my knowledge.

Q. 5. Leaving that area to one side for the moment, what if any use does a machine cutter have for a motor in discharging his duties as a machine cutter?

A. The machine cutters generally start in the afternoon when the day shift comes off and they take a locomotive and ride the locomotive to the location where their machine is located, generally speaking, and leave that locomotive there until the shift is over with and ride that locomotive back. They don't use the locomotive for any other purpose only to ride it to their machine on the section.

[fol. 359] Q. 6. That's the general rule as to your machine cutters generally?

A. Yes.

Q. 7. In such cases, do they have any duties in respect to sanding or oiling the motor?

A. When they use a locomotive just for riding purposes, it is rare they sand it or oil it, because it only goes the distance from the drift into the section where the machine is.

Q. 8. Are there instances where they ride the machine cutter itself instead of the motor?

A. Yes.

Q. 9. Explain that, please.

A. Occasionally the machine breaks down or something needs to be repaired on it, and the machine crew will ride the machine all the way from their working section to the repair shop which is located outside.

Q. 10. Where, ordinarily, are the cutting machines left at the end of the shift?

A. They are generally left at the location which will be easy for the machine men to get to and start the shift the following day or the following shift. They generally have a machine hole where they put the machine, on each section.

Q. 11. When that is done, how does the machine man get from the outside to where his cutting is to be performed?

A. Over at No. 1 Mine, the machine men that cut down in Gravel Branch and First North Drainway, generally ride an empty train of cars into the dispatcher's office and go down and get their machine.

[fol. 360] Q. 12. And in other instances, do they take motors from the yard and ride those in?

A. Occasionally, they will take a motor not in use and ride it in for their convenience.

By the Court:

Q. 13. You refer some times to motor and some times to locomotive. Is there any difference in them?

A. No, they are the same.

Q. 14. When Senator Muse questioned you on yesterday and you were describing how the machine operator, when he began work, went and got his motor and oiled it and sanded it, were you speaking of a locomotive?

A. I was speaking of the locomotive.

By Mr. Richardson:

Q. 15. Has that kind of locomotive or engine any necessary bearing on the operation of a cutting machine?

A. No, not any except the condition we have on the parallel where we have steep grades.

Q. 16. I am talking about the actual cutting?

A. No.

Q. 17. The machine cutter is equipped with its own motor?

A. Yes, its own motor.

Q. 18. Which provides electric power to drive the cutting blade?

A. Yes, sir.

Q. 19. When you told Senator Muse about the machine man getting his fifty pounds of bits, those are to be used on his cutting machine?

[fol. 361] A. Yes.

Q. 20. They have nothing to do with the motor?

A. Have nothing to do with the locomotive.

Q. 21. I believe you answered the inquiry that there is no connection whatever between the use of the motor and the cutting machine. Is it not so where you have steep grades in the particular section of your No. 1 Mine referred to, you do require the use of the motor to hold the cutting machines in place where they are performing the cutting function?

A. That's true.

Q. 22. So to that limited extent, the motor is required in the cutting operation?

A. Yes, on that particular section, where we use a locomotive, we do not have a cable reel truck coupled on to the machine. The motor couples on to the machine direct.

Q. 23. You have referred to the one section in which this unusual operation occurs. How many motor crews are involved on that section?

A. That haul coal.

Q. 24. How many cutting machine crews operate on that section?

A. On the entire section, I believe there are three.

Q. 25. How many altogether in your mines that require the use of a motor in connection with the cutting operation?

A. We generally use two locomotives on that section, some times only one, depending on where the cutting is and how much.

Q. 26. And those two motors are the only ones that are used any where in either one of these mines in that connection?

[fol. 362] A. To my knowledge, it is. Down in No. 4 Mine, the machine crew down there uses a motor whenever there is one available to ride in and out. They have two sections down there, one called the No. 4 Mine and the other the No. 8 Butt. When they go down there, they take a motor, because they can make more time.

Q. 27. Approximately how many machine crews do you have all over your two mines?

A. We have——

Q. 28. Incidentally, you refer to No. 4 Mine. That's just a sub-division of No. 1 Mine?

A. That's right. On August 15th, we had twenty-one machine men at the No. 1 Mine and we had sixteen machine men at the No. 2 Mine at that time.

Q. 29. Are those numbers approximately correct as of now?

A. Yes. I also have it on November 1st.

Q. 30. That's all right. We are dealing in approximate numbers—and of these, two machine crews are involved in this exceptional operation that you have explained?

A. Yes.

Q. 31. And there are two men on each crew?

A. There are two men on each crew.

Q. 32. You say these machine men work between shifts?

A. Yes, they work between shifts. They start work generally as soon as they can after the day shift comes off the section. That isn't necessarily true with every section but over at No. 2 Mine, practically every machine man is there around four-thirty to start work, but at No. 1

Mine, some of them wait for all the men to come out, and [fol. 363] others ride the last trip of empties going towards the working places.

Q. 33. Who keeps their time?

A. The night foreman keeps the machine men's time.

Q. 34. How does he get a record of their time?

A. He keeps a record—he is not with them much of the time. The machine men is more or less by themselves in the section.

Q. 35. Then the night boss gets the time from the machine men themselves?

A. Yes.

Q. 36. In that way, they keep their own time?

A. In a way, they do, yes. Occasionally, a machine man might not see the foreman and he will put down a shift and the next time he sees them, he will ask them how much they worked. That's the way he is supposed to do. He keeps their time the same as any one else.

Q. 37. You have referred to the fact that ordinarily machine cutters are piece workers and are paid by the number of tons they undercut?

A. Yes, they are piece workers and paid by the work they do by tonnage.

Q. 38. You have also referred to the fact that there are certain hourly machine cutters. Explain under what circumstances that is true.

A. In sections where you don't have enough cutting to keep the machine crew busy, we pay those machine men by the hour, and in case they finish their work before the shift is over with, they do anything else that's to be done, help timber or lay track or anything that's required of them.

[fol. 364] Q. 39. Approximately how many men work on that basis?

A. I believe we have two crews at the No. 2 Mine.

By the Court:

Q. 40. How many men in a crew?

A. Two men, and at the No. 1 Mine, we have three crews that work that way. You have to divide your machine work according to the number of working places and the number of tons there are to be cut.

By Mr. Richardson:

Q. 41. Are the services incidental to the cutting of coal performed by these machine men operating in the two mines of the Jewell Ridge Coal Corporation those which, by long established custom and practice, have been performed by the machine cutters?

A. Yes, I think so. That practice has been in all mines that I have been connected with.

Q. 42. And it has been so at this mine?

A. Yes, it has.

Recross-examination.

By Senator Muse:

Q. 1. Mr. Hagy, as I understand, the only machine crew who uses a motor is up in Parallel?

A. Up in that section, to my knowledge.

Q. 2. Mr. George Johnson, who works in Second North and First North Drainway, uses a motor, doesn't he?

A. He uses one to ride in and out.

Q. 3. Does he work in Parallel?

A. No.

[fol. 365] Q. 4. Why didn't you name him?

A. To my knowledge, he does not use the motor to propel the cutting machine.

Q. 5. Did you say anything—he is assigned a motor, isn't he?

A. He rides a motor in and out. I have never been on his section when he was cutting.

Q. 6. How do you know he doesn't use the motor to propel his machine from place to place?

A. I don't know that he does use one.

Q. 7. You just don't know.

A. I don't know on any section. I am not around to see them.

Q. 8. Aren't you using five cutting machines at No. 2 Mine?

A. How many?

Q. 9. Five?

A. I believe five.

Q. 10. And three of them at that mine use motors, don't they?

A. To ride in and out.

Q. 11. To propel the machines?

A. They are arcwall machines that propel themselves.

Q. 12. Don't they use them to take them from one place to another? You just don't know?

A. I don't know of any reason why they would. The machines are self-propelling.

Q. 13. Suppose the distance is so great and the work assigned during the night is so great that in order to perform that work they have to use a motor?

[fol. 366] A. The arcwalls, those machines are supposed to tram at four miles an hour and most all the places where these machines work are close together except some of the sections—some are a little far apart.

Q. 14. Does a man work in two sections?

A. No.

Q. 15. Do you know whether or not that three of the machine crews at No. 2 Mine use a motor to transport that machine from cutting place to cutting place?

A. I don't know it. I haven't seen them.

Q. 16. Do you know they don't?

A. I don't know whether they do or do not. I just don't know exactly.

Q. 17. Take Mr. George Johnson, do you know whether he uses a motor or not to transport his machine from place to place?

A. No, I do not. He has a motor to ride.

Q. 18. These men who use a motor don't use a pony truck, do they?

A. The ones that push the machine and cut with a locomotive do not use a pony truck.

Q. 19. And their current comes through the locomotive?

A. Through the cable on the locomotive.

Q. 20. And if he didn't have that locomotive, he wouldn't have the cable?

A. He would have it on the truck.

Q. 21. He hasn't got the truck?

A. It is there for him to use.

Q. 22. How many of those men use the cable off the motor, if you know? I don't know whether you do or not.

[fol. 367] A. If there are any of them using it, I don't know anything about it. There may be several, but it is not sensible for them to use it.

Q. 23. Do you assign a pony truck to each of these cutting crews?

A. Yes, there is one for each machine. I don't know how many are used.

Q. 24. Do you know where those pony trucks are?

A. No, I do not.

Q. 25. You don't know whether there are pony trucks in the sections or not, do you?

A. I know they are some where. I don't know the exact location. Each machine has a pony truck and the ones the motors push, the pony trucks are set aside, some where.

Q. 26. So far as you know, three of the machine crews at No. 2 Mine use motors?

A. They may or may not.

Q. 27. You don't know?

A. No.

Q. 28. And at No. 1 Mine, there are several more than the crews in Parallel using motors?

A. To push the machine, I don't have any knowledge of any others except the ones in Parallel.

Q. 29. Do you know Mr. George Johnson?

A. Yes, I know Mr. George Johnson.

Q. 30. He is the gentlemen sitting behind me over here?

A. Yes.

Q. 31. Where does he work, do you know?

[fol. 368] A. No, I would have to look at the record. I don't have a record with me. Those gentlemen work on the night shift and I don't see them while they are working.

Q. 32. You have no idea where he works?

A. I would have to look the record up and see.

Q. 33. Don't you know which mine he works in?

A. Yes, No. 1 Mine.

Q. 34. These men who use the motor use the motor that's assigned to them, don't they?

A. They attempt to let the men use the same motor all the time, because he doesn't have to cut the cable to make connection.

Q. 35. And those men who don't use motors have to go up and get the two gallon oil can full of oil just the same?

A. Yes, sir.

Q. 36. And have to go and get the fifty pounds of bits just the same?

A. Yes.

Q. 37. And then ride the man-trip or at least ride a car in?

A. It's a man-trip, in a sense. It's an empty trip of cars returning from the tipple which they ride.

Q. 38. And they go as close as they can to where their machine is?

A. Yes, sir.

Q. 39. And they have to carry the fifty pounds of bits and the two gallons of oil?

A. Some of them walk it and some ride.

Q. 40. How far do they have to walk and carry the fifty [fol. 369] pounds of bits and the two gallons of oil?

A. It depends on how close they can get on these cars that come in.

Q. 41. Suppose they have to catch it up at the drift mouth?

A. Which drift mouth?

Q. 42. The portal where the men go in.

A. They catch the trip of empty cars there.

Q. 43. How far is that from where they get the bits?

A. Something like two hundred and seventy-five feet from where they get the bits in the shop.

Q. 44. And if they have any other equipment—every other day they have to carry about four pounds of cup-grease?

A. Yes, they have to carry some cup-grease.

Q. 45. So the men who don't have a motor assigned to them have to get the fifty pounds of bits, two gallons of oil, cup-grease, and they may have other equipment, too, to take with them for that machine; is that right?

A. Yes, occasionally they may have something that they need to take for the machine.

Q. 46. Some parts to be replaced?

A. Some times they have to take a pick with them that they bring to the shop and get sharpened.

Q. 47. And they may have to take some other pieces for that cutting machine?

A. Yes, occasionally, they take a sheave with them.

Q. 48. They catch a train going in and ride as far as they can?

A. That's true.

[fol. 370] Q. 49. And when they get off, they have to walk to wherever the machine is?

A. Yes.

Q. 50. Maybe a thousand or fifteen hundred feet, or less, of course?

A. That's true.

Q. 51. And whatever distance it is up to a thousand or fifteen hundred feet, whatever it is, they have to walk and carry that same equipment?

A. That would only be to the section that the men do not have motors to ride on.

Q. 52. I am talking about a man not riding one of these motors, a walking machine cutter, he has to walk whatever distance it is up to fifteen hundred feet, in some instances, carrying all this equipment I have talked about?

A. Yes. That's at No. 1 Mine, the ones that don't take motors.

Q. 53. And they have to walk in that stooped over position, depending on how high the roof is from the bottom?

A. That's right. They have to walk stooped over where the roof is low.

Q. 54. There are very few places where they can walk straightened up?

A. It depends on where it is. Down on Gravel Branch, a very short distance, a man can walk standing up.

Q. 55. But if he goes to Parallel and First North, he has to stoop over?

A. Yes, the coal is only about forty-six inches thick [fol. 371] down there.

Q. 56. And when he gets to his machine, he has to sand it?

A. No. You don't sand the machines. They don't have any sand-box.

Q. 57. He has to oil it?

A. Yes.

Q. 58. Put the grease in?

A. Yes.

Q. 59. And put the bits in?

A. Yes.

Q. 60. And use the pony truck that has a cable on it and hook on to the wire and proceed ahead. That's what that man does, isn't it?

A. Yes.

Q. 61. The only difference between what he does and what the man who has a motor assigned to him does is that he has to catch a trip in and he doesn't have to do any sanding and oiling of his motor?

A. The man would prefer to use a locomotive to ride back and forth, because he gets there quicker. It gives him an advantage to get outside better when the shift is over and there is some advantage to the man using a motor to ride in and out on.

Q. 62. Also he can use his motor to take his machine back and forth faster?

A. It helps him on sections where he uses the locomotive to tram the machine.

Q. 63. And if the machine man hasn't got a motor assigned to him, he gets out the best way he can?

[fol. 372] A. He rides an empty car on the rear end of a load trip and he has to walk up the hill.

Q. 64. Isn't that against the rules, to ride on a load trip?

A. An empty car on the rear, no.

Q. 65. That is a coal trip?

A. No, that is the only way you have of getting a man out.

Q. 66. Is there anything in the rules saying that or are you just saying it?

A. No, that's a rule. I don't believe it is in here, but that's the rule.

Q. 67. Any way, getting out, he has to come out the best way he can,—he has to catch a trip the best way he can, coming out?

A. The first load trip he has an opportunity to catch.

Witness stands aside.

E. R. Burke, another witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stuart:

Q. 1. You are Senator E. R. Burke?

A. Yes, sir.

Q. 2. What connection have you with the coal mining industry at the present time?

A. I am President of the Southern Coal Producers Association.

Q. 3. I believe you are a lawyer?

[fol. 373] A. Yes.

Q. 4. Formerly United States Senator from the state of Nebraska?

A. That's correct.

Q. 5. When did you become President of the Southern Coal Producers Association?

A. Upon its organization on March 17th, 1942. The Articles of Incorporation of the Association had been filed the previous October, and the intervening time spent by a Committee in perfecting the organization, and I became the first President of the Association on March 17th, 1942.

Q. 6. Will you please describe the Association to the Court as to the area which it covers, the amount of production of coal, the approximate number of operating units, the approximate number of men employed and a few general items of that kind which will give the Court a picture of the character of this Association?

A. The Association is composed of fourteen District Associations, which constitute all of the District Associations in Southern West Virginia, Eastern Kentucky, Virginia, and Northern Tennessee,—one in Virginia, three in Kentucky, one in Tennessee and the remainder in Southern West Virginia. There are, in addition, a few individual companies that belong, that do not, for one reason or another, maintain membership in the local or district association in which their properties are located. This area produces something like two hundred million tons of bituminous coal a year, possibly a little less than that in the membership of our Association, as there are a few captive [fol. 374] mines in this District and I think that tonnage is included. That would be approximately one-third of the total bituminous production in the country. I believe the member companies employ something like one hundred and sixty-five thousand men at the present time.

Q. 7. Is the plaintiff here, Jewell Ridge Coal Corporation, within the Southern Coal Producers Association?

A. Yes, it is a member of our Association.

Q. 8. Now, there has been introduced in evidence already among the documents exhibited the last contract, basic wage contract, being that which was dated April 1, 1941, and there has already been testimony as to that contract and as to the bargaining relationships and their results prior thereto. I would like to ask you now, Senator, to start from that contract and proceed with the factual narrative so as to bring the picture down to date. That con-

tract, by its terms, was a two-year contract expiring March 31st, 1943,—covering the period April 1, 1941, to March 31, 1943. What was done in regular course, if anything, looking to the negotiation of a new agreement as March 31, 1943, approached?

A. Let me say first, that the contract to which you refer was effective from April 1, 1941, but was not actually dated until July 5, 1941, was the date of its execution, but it was effective, retroactive to April 1, 1941, and ran to midnight March 31, 1943. The contract itself contains a provision that the parties, in that case being the fourteen District Associations on the one side and the United Mine Workers on the other, should meet at the Hotel Commodore in New York on the 14th of March, 1943, to consider what, if any, changes should be made in the hours, wages and working [fol. 375] conditions set forth in the contract for the ensuing period. The date was advanced by mutual consent and the Southern Coal Producers Association had become the bargaining agent for the fourteen District Associations, so we met in New York on the 12th of March, with our negotiating group and the negotiating group representing the United Mine Workers, which included our friend, Mr. John Saxton, who is here as a representative of this District, and the District Presidents of the various United Mine Worker Districts in the Southern Area, and the chief negotiators on the part of the Union were Vice-President John O'Leary, Major Percy Tetlow, the Technical Advisor to the President of the Union, and various other officials of the Union. Do you desire me to go on and tell briefly the story of these negotiations?

Q. 9. I would like to ask you one or two other preliminary questions: These negotiations began in New York on what date?

A. The 12th day of March.

Q. 10. And they continued at that point how long?

A. We continued in New York for approximately six weeks, possibly a little longer than that. I can't give you the exact date. We continued until the wage dispute had been certified to the War Labor Board by the Secretary of Labor, and then the operating groups came to Washington to appear before the War Labor Board, by its direction. The representatives of the United Mine Workers did not choose to obey that summons and did not appear before the War Labor Board, and after various proceedings be-

fore the War Labor Board, negotiations were resumed in Washington between the operators and the representatives of the United Mine Workers under directions laid down [fol. 376] by the War Labor Board, and those negotiations continued until the 20th day of June, when it was—when the matter of negotiation ceased and the War Labor Board took complete charge of this case then.

Q. 11. Now, when that first break in negotiations occurred, at the end of which they were resumed in Washington, did that break occur before or after the first strike which began, I believe, May 1st?

A. Very considerably after the first strike.

Q. 12. The New York negotiations continued into the period of the first strike; is that correct?

A. Yes. I am quite sure I am correct on that.

Q. 13. Now, were there any joint or general meetings of the two groups at which the views of Mr. Lewis, the President of the United Mine Workers, were expressed? Did you have an opportunity to hear directly his views on the Union's objectives in these negotiations?

A. Yes. I believe there was only one occasion when both the Northern and Southern negotiating groups had a meeting together with Mr. Lewis and the entire negotiating committee for the Union, but on very frequent occasions, I was in conference with Mr. Lewis, to have the expression of his views, although he conducted the negotiations with the Northern Group in the Biltmore Hotel, and as I say, Mr. O'Leary, the Vice-President, and Major Tetlow conducted the negotiations in the adjoining hotel with our group.

Q. 14. Coming down now to the objectives of the Union as to changes which they desired to have made in the [fol. 377] Agreement, I will ask you what changes they particularly emphasized during the earlier stages of these negotiations?

A. If I may be permitted, I would like to make this suggestion: Counsel for the defendants submitted through Mr. Richardson, a list of the demands that were presented by the Union, and at Mr. Richardson's request, I examined that document and found it to be correct and initialed it, and if that is to be introduced in evidence, it would be helpful if it were available at this moment. I have a copy of it.

By Mr. Rogers: We haven't decided whether we will put it in or not.

By Mr. Stuart: We don't propose to introduce it. We merely want it for the use of the witness.

A document was thereupon produced by counsel for the defendants and handed to Mr. Stuart.

By Mr. Stuart: I will ask the reporter to mark this document for identification, entitled: "Wage Scale Increases Asked and Proposed Corrections of Mining Practices for the Bituminous Coal Industry Adopted By the International Policy Committee of the United Mine Workers of America,—New York, N. Y., March 9, 1943".

The document referred to was thereupon marked by the reporter: "No. 1 for identification—U. D. W. 11-20-43".

A. This paper that I hold in my hand and marked for identification "No. 1", contains a true and correct statement of the wage scale increases asked and proposed corrections of mining practices for the bituminous coal industry, which were presented to both conferences in the Appalachian area, in New York at a meeting in the Biltmore Hotel on March 10th, which I attended, which was a meeting of the Northern Appalachian Conference. Mr. Lewis, President of the United Mine Workers of America, presented these demands and discussed them in detail, and throughout the entire day of March 10th, presented his arguments in reference to the demands. Two days later, on March 12th, when our Conference opened, Mr. O'Leary moved that the demands and the explanatory statement of Mr. Lewis and his argument in support of the demands as presented to the other Conference be incorporated in our record without repetition, and I seconded that motion and that was done, and they appear in the official record of our proceedings in like manner as if they had been presented there in the first instance by Mr. Lewis himself. —There is a very grave danger I see, on the part of a witness who is not under restraint, in going a little far afield in matters that have been so foremost in our minds during these past several months.

By the Court: I think counsel had better direct the examination because I do not think it is necessary or material to go into all the ramifications of these Conferences.

I think the general outline of the negotiations is a proper part of the record, as it has its bearing upon the matter of the existence of an actual controversy and the history of the current background of the employer-employe relationship here involved, but I do not think it necessary or appropriate that all the details or ramifications of these Conferences be put into this record.

By Sen. Burke: If the Court will permit me, I was going to say I would try to confine myself strictly to the point I deem material, and if Mr. Stuart finds me wandering, I hoped he would bring me back.

Q. 15. If you will state what you have in mind, but what I was going to direct your attention to was the particular items which showed particular emphasis on the part of the United Mine Workers through the earlier stages of [fol. 379] the negotiations? What was developed as to what they were really after?

A. The United Mine Workers left no doubt on that point. What they wanted, first, foremost and all the time was a $2.00 a day wage increase. As Mr. Lewis stated to me and to all of us on many occasions, that meant two dollars, not a dollar and ninety-nine cents. They wanted two dollars, no more and no less, and throughout our entire proceedings, beginning in March until June 20th, that was the demand. Everything else that is referred to played a part only as it bore upon that demand, and in reference to this matter before the Court here, travel time and portal to portal pay, I want only to refer officially to the reference that they make in this proposal. Number Two, dealing with hours of labor, is divided into two sections, and "b", which has been read, is: "To conform with the basic and legal requirement for the industry, the maximum hours and working time provisions be amended to establish portal to portal for starting and quitting time for all underground workers"; and, in "3"—"Wage Rate Increases", appears first the demand for the two dollar a day increase, and then there follows a little later the statement: "The increased rates include compensation to meet the portal to portal starting and quitting time". Those are the only references to portal to portal or face to face in the demands, and throughout all the entire proceeding, there was never any suggestion made in my presence by Mr. Lewis or any negotiator for the Union that they wanted to abandon the

face to face method and go to portal to portal. That was never the thing in mind. They were talking travel time a great deal, we discussed that at great length, but that was [fol. 380] only in justification of the two dollar increase that was demanded, and when it appeared that—when they became certain that the operators would not join with them in presenting to the War Labor Board an agreement providing for a two dollar a day increase, and when it appeared certain, under the Little Steel Formula of the War Labor Board, there could be no straight wage increase granted, then emphasis was all placed upon what they called loosely the "portal to portal controversy", the "portal to portal problem", but which was not the matter before the Court here but was only the question of agreeing to pay for travel time as the only feasible means of getting a wage increase, and not at all changing the system to apply strict portal to portal.

By Col. Harris: If the Court pleases, I don't want to interrupt the witness, but may be follow the procedure of making a motion to exclude afterward. A great deal that he says involves conclusions and opinions and not statements of fact, but his conclusion as to where emphasis was placed and we conceive that a great deal of it is not admissible testimony, but in order not to take up undue time, if it is agreeable to the Court and the opposition, we will make a motion to exclude later.

By the Court: The testimony may be received, subject to the right of the attorneys to move to strike out such portions as they deem inadmissible, immaterial or impertinent, in a legal sense.

A. I would like to correct any wrong impression I may have given by making a statement as to where emphasis was placed. It wasn't a question of placing more emphasis upon the wage increase or portal to portal as there was a total absence of any suggestion that the method of pay be changed to portal to portal. The whole argument and everything presented was in favor of a wage in- [fol. 381] crease that under the circumstances, had to be disguised, we will say, as a payment for travel time, but without any change of the system really putting the portal to portal principle into effect.

Q. 16. Was there at any time during the earlier weeks or

months of negotiation any proposal made by the Union or any willingness expressed by its negotiators to increase the productive time above the seven hour day which had already been in effect for so long?

A. The matter was discussed frequently, and there was no willingness at any time on the part of the Union representatives to increase the productive time. When I proposed that matter to Mr. Lewis in person, that we might increase the productive time at the face from seven hours to eight hours, with time and a half for the eighth hour, Mr. Lewis' reply was: "What we want is not more pay for more work performed; we want and think we are entitled to more pay for the same amount of work."

Q. 17. Was there any departure from or any desire to abandon the principles contained in the Houck letter during all these earlier weeks and months of these negotiations?

A. There was not.

Q. 18. Has there ever been any agreement arrived at between the Union and the operators to this day as a result of those negotiations?

A. No. That should be qualified to this extent, that the War Labor Board, after hearings, made certain directives that did change the terms of the 1941 Agreement, for instance, in increasing the vacation allowance from twenty to fifty dollars, and the operators accepted those changes and [fol. 382] the Union accepted them and they have been applied,—there are quite a large number of those items, so while no agreement has been entered into, signed by both parties, making any changes, there are a very large number of changes that, by common consent, at least, are now in force, obligations that are being met by the operators, benefits that are being accepted by the miners.

Q. 19. But no new contract, so far as the Southern Coal Producers area and so far as the Northern area is concerned, has yet been arrived at?

A. That is correct.

Q. 20. Now, you mentioned that there was an earnest effort by the Union to get the operators to join with them in submitting a contract to the War Labor Board, which would approve a wage increase. What was the difficulty about awarding a wage increase so far as the War Labor Board was concerned?

A. The difficulty was this: That under the Wage Stabilization Act passed by Congress that became effective October 2, 1942, wages were to be stabilized as nearly as practicable as of that date, and the Administrative agency of the Government largely in charge of enforcing the Stabilization program had worked out what is popularly called "The Little Steel Formula," which provided that since there had been an increase in living costs from January 1, 1941, up to the time that they were making their decision effective of approximately fifteen per cent, that the Board determined that no increases would be granted to any employes who had already received as much as a fifteen per cent increase, unless for certain minor exceptions which I will not go into, and in the case of the Southern operators, [fol. 383] the 1941 Wage Agreement provided for a twenty-five per cent increase in the basic rate and a corresponding increase largely through the other classifications, so that there was no opportunity to maintain both the stabilization program and the Little Steel Formula and grant any increase to the miners in our employ, so we couldn't reach an agreement.

Q. 21. I will ask you a little later to introduce the text of the pertinent War Labor Board decisions, but at this point, will you state generally whether that question came specifically before the War Labor Board in the course of this controversy and what definite position, if any, it took in regard to an increase to the coal miners?

A. It did come specifically before the Board, although one party to the controversy, the United Mine Workers, refused to appear, it being stated publicly and in various documents I have here by Mr. Lewis that he could see no advantage in going before a Board that had already committed itself to a doctrine that would make it necessary to find against him on the matter, but the Board, however, did consider the matter and did specifically rule that no wage increase could be granted to the miners under the stabilization program.

Q. 22. With regard to the action of the Union in boycotting the Board hearings, I believe that it was changed after Congress enacted the War Labor Disputes Act, was it not?

A. In point of time, the change in the Union's position did follow the enactment of the Labor Disputes Act.

By the Court:

Q. 23. Is that what is commonly known as the Smith-
[fol. 384] Connally Act?

A. That's right.

By Mr. Stuart:

Q. 24. That was June 25th, I believe?

A. The effective date of the Act, yes. If I may say this further to your question, the representatives of the Union appeared before the War Labor Board for the first time when the Board was considering what we call the First Illinois Supplemental Agreement, and Mr. Crampton Harris appeared at that time and made the argument in support of that Supplemental Agreement and Mr. Lewis was there and made a statement to the Board, and that was the first appearance.

Q. 25. That was approximately when?

A. July 23rd, I believe, was the date of the Agreement, and the hearing before the Board was within a week or ten days after that, I believe. Any way, as asked, it was after the Smith-Connally Act became effective and I think the Union representatives had said that that was responsible for their change in position and their willingness to appear before the Board, although I wanted to make it clear that there was more to it than that.

Q. 26. The First Illinois Supplemental Agreement, I see, was dated July 20th, and the Board's order thereon was dated August 24th. Now, this controversy was actually certified to the National War Labor Board at quite an early stage, was it not, in the controversy?

A. Yes, comparatively speaking. After six weeks, about six weeks of hearings in New York, it was certified to the War Labor Board.

[fol. 385] Q. 27. Certified to the War Labor Board before the first strike began on May 1st?

A. Yes.

Q. 28. With reference to the relative positions of the Union and of the War Labor Board and their respective policies that you have expressed, what can you say as to expressions on the part of Union representatives with regard to stabilization of wages and protection against inflation during these negotiations?

A. Mr. Lewis, during his opening statement to the Conference, and on many occasions thereafter, as well as other authorized representatives of the Union, stated to us over and over again that inflation was already here, that the stabilization program could not and should not be maintained, and that they were then doing and would do all they could to see that the stabilization program was not made effective, as far as they were concerned, because they didn't think it was effective so far as others in our economic society were concerned.

Q. 29. When was it, I mean as to the successive stages in these negotiations and in the development of the controversy, at what point was it that the portal to portal demand on the part of the Union took on substance as upon an actual portal to portal basis rather than as a disguise, as you have expressed it, of a demand for a general wage increase?

A. Almost immediately following the rejection by the War Labor Board of the First Illinois Supplemental Agreement, which I believe you have said, was August 24th.

Q. 30. And that was not until after the decision on the first Illinois Supplemental Agreement by the Board?

[fol. 380] A. That's right.

Q. 31. Could you say or not as to whether that was after prolonged and earnest efforts on the part of the Union to obtain a wage increase in various other ways?

A. Efforts prolonged to cover the entire period from March 10th to that date, and vigorous and forceful to the last degree and confined solely to the matter of endeavoring to obtain a wage increase.

Q. 32. Now, you have said that up to that time, there was no desire expressed by the Union representatives to depart from the principles of the Houck letter, but on the contrary, they sought to preserve the seven hour production day?

A. That is correct.

Q. 33. I should like you to give your views, Senator, as to whether the portal to portal basis for compensating employes in the bituminous coal industry, and in particular for compensating the piece workers who are such a large element in that industry, is a practical basis, under the conditions of what we might call normal marketing and competitive conditions, and in connection with that, I want to read you for your comments a paragraph which I see in this morning's newspaper, The Roanoke Times, dated from Washington, November 19th, an AP Dispatch: "Soft

coal operators complained today that their money had been used 'without any trace of consent' to pay for Federal operation of the mines and declared that they must have official assurance of higher prices to cover their costs. Unless the Government acts quickly and adequately to so assure them, they said in a letter to Stabilization Director [fol. 387] Fred M. Vinson, many of them will not be able to finance government operation of their property beyond next week."

A. In answer to the first part of your question, I think it would be some what out of place and not of importance for me, with my training and background, to express an opinion on the relative merits of the face to face method of computing pay as contrasted to the portal to portal. I would only say I subscribe fully to the views expressed by Mr. O'Neill and Mr. Morrow on the stand here in court and as expressed by Mr. Houck and Mr. O'Neill and others in the letter of July 9th, 1940, that they submitted to Administrator Fleming, and I could only say that my limited contact with mining operations, but very close contact with mine operators during the past two years, has convinced me that Mr. O'Neill described the matter with entire correctness when he said that after a long period of constructive moves, the Union, under the exigencies of the present moment, as it seems, is now embarked upon a fully destructive move in attempting to impress this change upon the industry, and it is my firm conviction that the move would be destructive to a very great extent, both as to the best interests of the operators and the miners alike, to make the change. In reference to the matter that you have just read, which arises out of a conference now going on in Washington, called by Secretary Ickes, and in which the Union and Mr. Lewis are participating, and many operating groups are participating, I could only say that in the First Illinois Supplemental Agreement and the Second Illinois Supplemental Agreement, and necessarily incorporated by reference in the Ickes-Lewis Agreement, is the provision that these increased wages shall not become [fol. 388] effective until the OPA and the Stabilization Director have granted an increase in maximum cost so that the entire additional burden can be passed on to the consumers of coal, as it is admitted by all Governmental agencies familiar with the matter that the coal industry itself cannot bear these additional burdens to any extent whatever.

By the Court: Is there in the record, gentlemen, a copy of the provisions in the Illinois Agreement and the Ickes-Lewis Agreement relative to portal to portal pay?

By Mr. Stuart: Not yet, Your Honor. We intend to put them in.

By the Court: I would like to have the actual documentary treatment of the question as embodied in those agreements.

By Mr. Stuart: We propose to document this period from March 31st very fully and to ask this witness for comments on the points.

Q. 34. Senator Burke, in your answer that you have just made you spoke of the necessity for the OPA to allow maximum cost. I take it instead of cost you meant price?

A. Increase the maximum price to cover fully the increased cost that would be involved by putting the new program into effect.

Q. 35. You said to increase the maximum cost. You meant "price"?

A. Increase in the maximum cost would be accomplished very fully by putting into effect the program.

At this point a recess for the period of fifteen minutes was taken.

Q. 36. Taking up now the factual narrative and starting [fol. 389] at the point where the negotiations were being conducted in New York last March, I want to bring the narrative on down to date, and I want to note, as we go along, the extensions, if any, of the contract of April 1, 1941. As the date March 31, 1943, approached, and no agreement was in sight, did the President of the United States enter the picture in any way?

A. He did, yes, by telegram addressed to the spokesman for each of the operating groups and to Mr. Lewis, as spokesman for the United Mine Workers, an identical telegram being sent to each of the parties under date of March 22, 1943.

Q. 37. Have you the original telegram addressed to you by the President?

A. I have.

Q. 38. I will ask you to introduce that telegram in evidence, marked "Plaintiff's Exhibit No. 29."

By Col. Harris: We offer the same objection to all these documents. We make no point on authenticity or correctness but the same general objection we have heretofore interposed.

By the Court: Let it be so noted that the defendants, by counsel, object to this and succeeding documents shortly to be presented, upon the grounds heretofore stated, and the Court treats the objections as motions to strike, and the documents are admitted upon the same conditions that the documents heretofore have been admitted.

By Mr. Stuart: May it be further understood that all documents to be introduced by this witness have been submitted to the defendants and they make no objection on the ground of authenticity?

By Col. Harris: There were three or four we didn't have.

By the Court: They may be admitted with the understanding that if any question as to their correctness arises [fol. 390] before the trial closes, such objection shall be stated.

By Mr. Stuart: In the case of this Exhibit 29 and certain other papers, they are originals and if there is no objection, we would like to withdraw the original and substitute a copy.

A. I file same.

A copy of the telegram referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 29", and is returned as a part of this transcript.

Q. 39. Now, subsequent to the receipt of that telegram from the President, did the negotiators arrive at an agreement for the extension of the contract?

A. They did. On March 29th, in the Southern Appalachian Joint Wage Conference, an agreement was signed by the operators negotiating committee of the Southern Appalachian Joint Wage Conference and by the negotiating committee of the United Mine Workers of America, in that conference. That's my copy of the original document.

Q. 40. You have handed me an original signed copy of a document headed: March 29, 1943. Southern Appalachian Joint Wage Conference", and I will ask you to introduce it as "Plaintiff's Exhibit No. 30".

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 30", and is returned as a part of this transcript.

Q. 41. As the month of April drew towards a close, did the War Labor Board, through its Chairman, William H. [fol. 391] Davis, enter the controversy?

A. He did and I hold in my hand a wire addressed to me by Chairman Davis, dated April 23, 1943.

Q. 42. Will you introduce in evidence the telegram in question, marked "Plaintiff's Exhibit No. 31"?

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 31", and is returned as a part of this transcript.

Q. 43. Pursuant to that telegram, was a hearing held by the War Labor Board, and if so, have you a copy of the order entered by the Board at such hearing?

A. Yes. The hearing was held on April 24th, and the representatives of the Operators Negotiating Committee were present. The negotiators for the United Mine Workers were not present.

Q. 44. I ask you to file in evidence a copy of the Board's Order of April 24, 1943, marked "Plaintiff's Exhibit No. 32".

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 32", and is returned as a part of this transcript.

A. I would like to make a brief statement in reference to that hearing on April 24th, just quoting two sentences that were state dby the Board at that public hearing, in my presence, on April 24, if I may.

Q. 45. Very well.

A. Dean Wayne Morse, Public Member of the Board, [fol. 392] was charged with the responsibility of presenting the Board's views, and he made in my presence this statement: "It is the unanimous position of the Board that the old contract continues to be extended in accordance with our previous order, to such time as the Board hands down a decision on the merits, and that, therefore, any stoppage of work on the part of the United Mine Workers of America

constitutes a violation of the contract, which the Government, functioning within its war powers, has directed the parties to extend until such time as the case is settled on its merits by the National War Labor Board. That is the unanimous decision of the Board. Mr. Lewis will be apprised of that fact before the day is out, and, therefore, you will proceed under the old contract as extended". And at the same hearing, just before the close, Mr. Van Bittner made a statement, in which is the following: "First, by action of this Board, there is a contract between the United Mine Workers of America and the operating groups in the bituminous coal fields".

Q. 46. Those statements which you are reading, were they not made at the May 17th meeting, and not the April 24th meeting?

A. I was under the impression that was April 24th. No, I guess maybe you are right on that. I have gotten ahead of my time. Let me finish my statement, but have the date corrected to May 17th. At the same hearing, on May 17th, when the same parties were present as on April 24th, and after the statement made by Mr. Morse, in my presence, only one paragraph of which I have read, Mr. Van Bittner said: "I would just like to make one statement before the meeting adjourns, on two points. First: By action of this Board there is a contract between the United Mine Workers of America and the operating groups in the bituminious coal fields".

[fol. 393] Q. 47. Who was Mr. Van Bittner?

A. He is a Labor Member of the Board, formerly District President, I believe, for the United Mine Workers in this Southern Area.

Q. 48. Now, when the thirty day extension which was previously agreed upon expired on May 1st, what happened then?

A. There was a work stoppage at that time.

Q. 49. Did the Government take a hand in that, and if so, what did it do?

A. The Government seized the mines on that day.

Q. 50. Following that occurrence, did the War Labor Board issue an Interim Directive Order under date of May 14th, 1943?

A. The Board did issue such an order and a copy of that order is contained in the paper which I hold in my hand.

Q. 51. I will ask you to file a copy of that order as an Exhibit with your evidence, marked "Plaintiff's Exhibit No. 33".

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 33", and is returned as a part of this transcript.

Q. 52. Now, at that time, Senator Burke, did the War Labor Board have the Houck letter before them? Were they familiar with the Houck letter?

A. Yes.

Q. 53. And the Administrative ruling thereon?

A. Yes, the entire matter and all the circumstances in relation to the Houck letter and copies of the letter and the [fol. 394] Administrative Ruling were part of the record before the Board prior to that time and were discussed at length before the membership of the Board.

Q. 54. Did the President place a member of his Cabinet in charge of the bituminous coal industry upon the Government seizure, and if so, who?

A. The President, by Executive Order, placed Secretary of Interior Harold Ickes in charge of the mines.

Q. 55. Did Secretary Ickes send John L. Lewis, President of the United Mine Workers, a telegram under date of May 17th, 1943?

A. A copy was received by me in my official capacity from the office of the Secretary of the Interior, stating that it was a copy of a telegram that the Secretary had sent to Mr. Lewis.

Q. 56. Is that the paper which you hold in your hand?

A. That is a copy of it.

Q. 57. I will ask you to introduce a copy of that telegram of May 17th in evidence, marked: "Plaintiff's Exhibit No. 34".

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 34", and is returned as a part of this transcript.

Q. 58. Did Mr. Lewis reply to the telegram of Mr. Ickes, also under date of May 17th?

A. Yes, a copy of the telegram was furnished to me under the same circumstances as the telegram from Mr. [fol. 395] Ickes to Mr. Lewis.

Q. 59. Is that the paper which you hold in your hand?

A. That's a copy of it.

Q. 60. I will ask you to file that telegram in evidence as: "Plaintiff's Exhibit No. 34-A".

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 34-A", and is returned as a part of this transcript.

Q. 61. You have already referred to the Board hearing of May 17th, at which the statements which you have quoted by Dean Morse and Mr. Van Bittner were made. After that and other hearings, did the War Labor Board issue a paper entitled "Comments and Directive Order—May 25, 1943"?

A. That was done, yes, sir, and I hold in my hand a copy of the Comments and Directive Order so issued.

Q. 62. Will you file that document in evidence, marked as "Plaintiff's Exhibit No. 35".

A. I will.

The document referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 35", and is returned as a part of this transcript.

Q. 63. Now, when the end of that expiration was reached on May 31st, was there a further strike by the coal miners?

A. There was another work stoppage at that time.

Q. 64. And on June 1st, did Mr. Ickes send Mr. Lewis a [fol. 396] telegram?

A. He did, and a copy of it is now held in my hand.

Q. 65. Will you file a copy of this telegram of June 1st from Mr. Ickes to Mr. Lewis as "Plaintiff's Exhibit No. 36"?

A. I will.

The copy of document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 36", and is returned as a part of this transcript.

Q. 66. On June 3rd, did the President of the United States again enter the situation and send a telegram to Mr. Lewis?

A. I am not certain about the telegram to Mr. Lewis, but on June 3rd, the President of the United States made a public statement, copies of which were furnished to me officially from—I think they came through the office of War Information; and that is a copy of the statement made on that date.

Q. 67. Will you file the copy of the President's statement of June 3rd in evidence, marked as "Plaintiff's Exhibit No. 37"?

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 37", and is returned as a part of this transcript.

Q. 68. Thereupon, did the United Mine Workers direct the miners to return to work and did they do so?

A. I believe orders were issued directing the miners to return to work, and if I recall it, there was some delay in all of them doing so, but eventually, they did.

[fol. 397] Q. 69. They were directed to return on June 20th?

A. That is correct. When the order was issued, it directed their return up to June 20th.

Q. 70. Thereafter, did the National War Labor Board issue its opinion on the coal wage controversy under date of June 17th? I have handed you the opinion handed down by the Board in deciding the controversy on June 17th.

A. Yes. In this document there is contained the opinion of the Board in the matter, dated June 17th, the dissenting opinion of certain members of the Board, and special concurring opinion by Dean Morse and the usual public release in reference to the document.

Q. 71. Will you file that document, dated June 17th, 1943, in evidence as "Plaintiff's Exhibit No. 38"?

A. I will.

The document referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 38", and is returned as a part of this transcript.

Q. 72. The document which you introduced as Plaintiff's Exhibit No. 38 had appended to it, as I believe you said, a statement issued by the Chairman of the Board, William

H. Davis, at the time of handing down the opinion, and I will ask that that statement be filed as "Plaintiff's Exhibit No. 38-A".

A. I file same.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 38-A", and is returned as a part of this transcript.

[fol. 398] Q. 73. Under that opinion which is Plaintiff's Exhibit No. 38, did the Board on June 18th, 1943, issue a Directive Order?

A. It did, and I hold in my hand a copy of the order so issued.

Q. 74. Will you file this copy of the order of the Board, dated June 18th, 1943, as "Plaintiff's Exhibit No. 38-B"?

A. Yes.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 38-B", and is returned as a part of this transcript.

Q. 75. Now, when June 20th, 1943, rolled around, was there another strike?

A. Yes, there was.

Q. 76. But I believe the President of the United States issued an appeal and the miners, on June 23rd, were directed by the United Mine Workers to return to work up to October 31st?

A. That is correct.

Q. 77. Under date of July 20th, was an Agreement reached between the Illinois Coal Operators Association and the United Mine Workers?

A. Well, I was not present at the making of the Agreement but I was present at the hearing before the Board and it was there stated that the Agreement had been reached on July 20th.

Q. 78. Were you furnished with a copy of the Agreement?

A. At the date of the hearing on it, yes.

Q. 79. Have you a copy of the Agreement?

A. Yes, this is a correct copy of the Agreement to which [fol. 399] you refer.

Q. 80. Will you file the copy of the Agreement of July 20th, which we shall call the First Illinois Supplemental Agreement, as "Plaintiff's Exhibit No. 39".

A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 39", and is returned as a part of this transcript.

Q. 81. Did that First Illinois Supplemental Agreement come before the National War Labor Board for consideration and did the Board hold hearings in connection therewith?

A. It did. It came before the Board for public hearing at which I was present, but not as a participant, and under date of August 24th, the Board handed down its decision in the matter.

Q. 82. Is this paper which you have handed me a copy of the Board's opinion and order of August 24th, 1943?

A. It is.

Q. 83. Will you file the Board's Order of August 24th as "Plaintiff's Exhibit No. 39-A" and the Board's Opinion of the same date as "Plaintiff's Exhibit No. 39-B"?

A. Yes.

The documents referred to were thereupon filed, marked, respectively, as: "Plaintiff's Exhibit No. 39-A" and "Plaintiff's Exhibit No. 39-B," and are returned as a part of this transcript.

Q. 84. I believe the effect of the Board's decision and [fol. 400] order of August 24th was to disapprove the First Illinois Supplemental Agreement?

A. Well, the Order, of course, speaks for itself, but if I might be permitted to say, the Board said that certain parts of the Agreement were not matters involving wage increases, and, therefore, neither approved nor disapproved them, but did disapprove the agreement, because of the provision for the payment of $1.25 a day for the settlement of all liability for travel time, which the Board declares in its opinion would be a wage increase.

Q. 85. Did the Illinois Coal Operators Association and the United Mine Workers arrive at a second agreement, which I shall call the Second Illinois Supplemental Agreement, under date of September 23, 1943?

A. They did reach such an agreement, and a copy of that agreement was furnished me from official quarters, I think directly from the War Labor Board.

Q. 86. Have you a copy of that Agreement in your hand?

A. I do.

Q. 87. Will you file that copy of the Second Illinois Supplemental Agreement as "Plaintiff's Exhibit No. 40"?

A. Yes.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 40," and is returned as a part of this transcript.

Q. 88. Did the Second Illinois Supplemental Agreement come before the National War Labor Board for consideration and decision?

[fol. 401] A. There was a public hearing before the War Labor Board, at which I appeared and testified or argued on behalf of the Association that I represent, and the United Mine Workers and the Illinois Operators and the Northern Appalachian Operators also appeared and participated in the hearing, and there was a decision rendered by the Board under date of October 26th, 1943.

Q. 89. Have you a copy of the Board's decision in your hand?

A. I do so have.

Q. 90. Will you file that copy as "Plaintiff's Exhibit No. 40-A"?

A. Yes.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 40-A," and is returned as a part of this transcript.

Q. 91. In general, I believe the effect of that decision was to approve the Agreement, except as to a certain amount of the wage increase that was allowed, amounting to 37½¢ per day?

A. That is correct.

Q. 92. But the Board did not approve the Agreement as it was tendered by the parties?

A. That is right.

Q. 93. Now, in connection with this Second Illinois Supplemental Agreement, which, in an amended form, I believe, finally became the Agreement, setting forth or specifying the terms and conditions upon which the industry is

now operating, I want to ask you whether you have any figures which compare the Illinois Field and the West Virginia-Virginia Field in respect to operating conditions, and [fol. 402] if you have, I will ask you to read those figures for the year 1939 and for the year 1941, as to each of these three Areas, namely, Illinois, West Virginia and Virginia.

A. Yes, I have such figures and can read the one line containing them as they appear in the document entitled: "Bituminous and Lignite Coal Tables; 1939-1940-1941. Issued by United States Department of Interior—Bituminous Coal Division—January, 1943," and in answer specifically to your question, Table 55 from that document shows that in Illinois in 1939, there was a total production of 46,000,000 tons, of which 12,000,000 tons was mined by stripping, 8,000,000 hand loaded and 26,500,000 tons machine loaded.

Q. 94. Let me interrupt you there. In strip mining, is there any travel time?

A. No.

Q. 95. In machine loading, is piece work the basis?

A. No, machine loading, by and large, is day work.

Q. 96. But hand loading, I believe, is on the piece work system, which we have heretofore been accustomed to on the face to face basis?

A. That's correct.

Q. 97. Will you proceed?

A. In Virginia, in the same year, 1939, the table shows there was no coal mined by stripping, that out of a total production of 13,500,000 tons, over 11,000,000 tons was hand loaded, leaving less than 2,500,000 tons machine loaded. In West Virginia for the same year, out of a total production listed here of 108,000,000 tons, it shows there was 592,000 tons mined by stripping, 77,000,000 tons hand [fol. 403] loaded and 30,000,000 tons machine loaded, and to make the statement complete, giving the figures for the year 1941, shows that in Illinois, out of a total production of 54,000,000 tons, approximately 14,000,000 was mined by stripping, and in excess of 33,000,000 tons machine loaded, leaving 7,000,000 tons hand loaded. In Virginia, in 1941, it shows out of a total production of 18,500,000 tons, two thousand tons plus was mined by stripping, 14,500,000 tons hand loaded, leaving something less than 4,000,000 tons machine loaded, and in West Virginia, out of a total production in 1941 of 140,000,000 tons, 1,000,000 tons was

mined by stripping, 81,600,000 tons hand loaded, leaving 57,300,000 tons machine loaded.

Q. 98. Now, when October 31st rolled around, was there again a strike among the coal miners?

A. There was.

Q. 99. About when and how did it begin and when did it become general?

A. For a matter of ten days or more prior to October 31st, there was a stoppage of work, in Alabama, in particular, and to some extent in Illinois and Indiana, and beginning the latter part of the last week in October, work stoppages began to take place throughout the area covered by this, our Association, and in the Northern Appalachian area, and by Saturday, October 30th, there was almost a complete stoppage of work, which became one hundred per cent complete on the morning of Monday, November 1st.

Q. 100. What, if anything, did the Government do then?

A. The President first issued a statement, saying that he would take no decisive action in the matter until after the [fol. 404] Policy Committee meeting of the United Mine Workers, which was called for four or four-thirty o'clock Monday afternoon. After that Policy Committee had met and still late in the afternoon or evening of November 1st, the President issued an order, seizing the mines again and placing them in charge of Secretary of the Interior Ickes.

Q. 101. I believe in this Order, Mr. Ickes was authorized to negotiate an agreement on wages and conditions with the miners?

A. The terms of the order, I believe, read that the Secretary was authorized to offer to the United Mine Workers of America a contract covering wages and working conditions for the period of Government operation.

Q. 102. Was there a provision in it to the effect that it should be in accordance with the War Labor Board's decisions in this controversy?

A. It referred specifically to the Second Illinois Agreement,—to be worked out in accordance with the provisions of the Second Illinois Agreement, and subject to the approval of the War Labor Board.

Q. 103. Was an Agreement arrived at between Mr. Ickes and the United Mine Workers?

A. Yes, on November 3rd.

Q. 104. Have you a copy of that Agreement?

A. I do have such a copy.

Q. 105.. Will you file a copy of the Agreement between Mr. Ickes and Mr. Lewis, as I note they are the sole signatories, dated November 3rd, in evidence as "Plaintiff's Exhibit No. 41"?

A. Yes.

[fol. 405] The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 41", and is returned as a part of this transcript.

Q. 106. Was that agreement submitted to the National War Labor Board and did the Board consider and act upon it?

A. Yes, it was submitted, and on November 5th, the Board, by resolution, acted upon it.

Q. 107. Have you in your hand a copy of the War Labor Board's resolution of November 5th, 1943?

A. I have.

Q. 108. Will you file that resolution in evidence as: "Plaintiff's Exhibit No. 41-A"?

A. Yes.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 41-A", and is returned as a part of this transcript.

Q. 109. The effect of that action of the Board was, I believe, to approve the Ickes-Lewis Agreement, with certain exceptions under two heads, namely, the provisions for payment of tonnage or piece workers, and a different application of the provisions as to pushing cars?

A. Yes, the effect of the resolution was to approve for the period of Government operation the Ickes-Lewis Agreement, with the exceptions that you have noted, and with the requirements that on those matters, particularly in reference to the payment of piece workers, the matter is to be [fol. 406] re-submitted to the War Labor Board for their approval of any clarification that was reached by the parties to the Agreement, Mr. Ickes and Mr. Lewis.

Q. 110. Up to date, has any clarification on that point gone out to the Industry.

A. No. Mr. Ickes and Mr. Lewis, however, did submit it to the Labor Board, which the War Labor Board for the last seven or eight days has had but has not yet acted on, and with which the industry is not acquainted.

Q. 111. So the industry does not know yet how to figure compensation for piece-workers under this Agreement?

A. That's right.

Q. 112. I believe the material submitted to the Board by Mr. Ickes and Mr. Lewis on this point went back to the contract of April 1, 1941, again, did it not?

A. I do not quite understand your question.

Q. 113. The suggestions that were made to the Board for arriving at the amount of compensation under that head went back to the wage rates in the contract of April 1, 1941, did they not?

By Col. Harris: I understood the witness to say that he was not familiar with——

A. I was just about to repeat that I do not know, except in a very general way, *with* all the formula is.

Q. 114. In connection with the Board's action on the Ickes-Lewis Agreement of November 3rd, did Mr. Wayne L. Morse, a member of the Board, file a dissenting opinion?

A. He did and I hold a copy of it in my hand.

Q. 115. Will you file a copy of that opinion in evidence as "Plaintiff's Exhibit No. 41-B"?

[fol. 407] A. I will.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 41-B", and is returned as a part of this transcript.

Q. 116. Under date of November 5th, did Mr. William H. Davis, Chairman of the National War Labor Board, write a letter to Mr. Ickes on this subject?

A. He did—a letter in reference to what we call the Ickes-Lewis Agreement of November 3rd.

Q. 117. Have you a copy of that letter?

A. Yes.

Q. 118. Will you file a copy of that letter in evidence as "Plaintiff's Exhibit No. 42"?

A. Yes.

The document referred to was thereupon filed, marked as: "Plaintiff's Exhibit No. 42", and is returned as a part of this transcript.

Q. 119. Now, on the matter of paragraph 13 of the Second Illinois Supplemental Agreement, which was mentioned in the Ickes-Lewis Agreement, and which has been the subject of the $40.00 portal to portal payment provided in the

Second Illinois Supplemental Agreement, did Mr. K. C. Adams, of the United Mine Workers, address a memorandum to Mr. J. D. Battle, Executive Secretary of the National Coal Association, under date of November 9th?

A. He did. I was present with Mr. Battle when the mat-
[fol. 408] ter was dicussed over the phone with Mr. K. C. Adams, who was head of the Publicity Department, and head of its Official Journal, and Mr. Adams said he would send over a memorandum to Mr. Battle, containing his views on Paragraph 13, and he did send over a memorandum, of which the paper I hold in my hand is an exact copy.

Q. 120. Will you file that paper as "Plaintiff's Exhibit No. 43".

A. I will.

The document referred to was thereupon filed, marked as "Plaintiff's Exhibit No. 43", and is returned as a part of this transcript.

Q. 121. Now, upon the consummation of the Ickes-Lewis Agreement, I believe the miners returned to work and are still at work as of this date?

A. That is correct, and I would like to make this comment on the contention that the operators I represent are obligated to make the $40.00 payment agreed to by the Illinois Coal Operators. We dispute that contention and made our position known to the War Labor Board and Secretary Ickes, that we have no recognized in any way any liability arising out of the portal to portal matter and have not made any agreement in reference thereto and do not expect that the Government either has the authority or the desire to impose any such agreement upon us while we are having tested in court the question of whether there is any liability.

Q. 122. In line with the position taken by Mr. Adams in
[fol. 409] his memorandum to Mr. Battle of November 9th, do you know whether Mr. Lewis has subsequently adopted the same position in a conference with Mr. Ickes, or otherwise?

A. My knowledge on the subject would be by hearsay, as I was not present at the conference.

Q. 123. I hear no objection.

A. I have been notified that Mr. Lewis took exactly the same position before Mr. Ickes that Mr. Adams outlines

in his letter, but that Mr. Ickes, up to the present time, however, as not as yet found any way in which he could comply with that position.

Witness stands aside.

At this point, it being 12:45 o'clock P. M., an adjournment was taken until 1:45 o'clock P. M., at which time the trial of this case was resumed.

E. R. BURKE, a witness heretofore introduced on behalf of the plaintiff, being recalled, testified as follows:

Cross-examination.

By Col. Harris:

Q. 1. Senator, you had no experience in the coal business until you became President of the Southern Coal Producers Association on March 17th, 1942, did you?

A. None whatever.

Q. 2. And since March 17th, 1942, your experience has not had anything to do with the operation of coal mines?

A. Not as an operator of a coal mine, no. I have visited a [fol. 410] great many mines but I have had no experience in operating a coal mine.

Q. 3. And the wage negotiations that have been going on since early in March, 1943, are the first wage negotiations between any coal operators association and the United Mine Workers in which you have ever participated, are they not?

A. With this exception, that beginning very shortly after my assumption of those duties on March 17th, 1942, it became necessary to consider several different supplementary agreements in connection with the 1941 contract, the most notable of those being in reference to the six day work week, so that the negotiating committees on a number of occasions were in session, both the United Mine Workers and the Operators, working out these various matters, but you are entirely correct in saying that there was nothing approaching or resembling at all the negotiation of a basic wage agreement until we met in New York in March of this year.

Q. 4. Nothing that you had had anything to do with?

A. That I was connected with in any way, no, sir.

Q. 5. The United Mine Workers submitted in March, 1943, to your Association, a list of about twenty-two demands, didn't they, or twenty-four demands?

A. Whatever the number was. They were listed as twelve major demands, but in the case of one or two of them, there were a number of sub-divisions. It was in my mind nineteen, but there might have been twenty-two or twenty-four. They are all set out in that paper filed this morning.

Q. 6. Have the United Mine Workers ever filed any supplemental list, withdrawing a single one of those demands?

[fol. 411] A. I think I can say emphatically, no.

Q. 7. Did you know, before you heard Mr. O'Neill testify, that it was the policy of the United Mine Workers, when they made a demand, never to abandon it?

A. I heard that at least a hundred times in the course of our negotiations in New York, that that was the policy of the United Mine Workers.

Q. 8. And the demand that they submitted about March 10th or March 12th contained a demand for portal to portal pay, didn't it?

A. It certainly did, to the extent, at least, that I discussed this morning, yes, sir.

Q. 9. And when you said that there was a total absence of any suggestion of portal to portal pay, did you mean to imply to the Court that the United Mine Workers had abandoned their claim for portal to portal?

A. I did not mean to imply anything to the Court, but I meant to state directly and positively that the United Mine Workers at no time, in interpreting that demand and presenting it, urged or considered a real portal to portal demand, which would be a system in which the work day would begin at the portal and end at the portal, and throughout the period and until after the rejection of the First Illinois Agreement, there was never any suggestion made by any representative of the United Mine Workers for a change in the system from face to face to portal to portal.

Q. 10. The War Labor Board, in Exhibit No. 38, in its opinion of June 17th, which preceded by two months its rejection of the Illinois contract, took up the question [fol. 412] of portal to portal pay, didn't it?

A. Because it was one of the demands submitted and they took up every demand, one after the other, and acted on them.

Q. 11. And as a matter of fact, the press of the country from time to time since March, 1943, has carried articles and discussions on the portal to portal demands of the United Mine Workers, haven't they?

A. Yes, indeed, and that matter of portal to portal was discussed every day we were in conference, but I attempted to draw the distinction that it was discussed on the basis of payment for travel time, leaving the computation of wages at the face, or paying separately as such for travel time, and that was the matter that was urged day in and day out and discussed in the press, but not a real change over to the portal to portal system of computing pay.

Q. 12. I don't know whether I clearly follow you. As I gather it, you say they had a demand for wage increase and also a demand for pay for travel time?

A. In the written demands, that's correct.

Q. 13. And there were many discussions where the demanded pay or discussed pay for travel time?

A. Oh, yes, indeed. They were discussing pay for travel time right along every day on the basis of—as stated to us—that the average time in the Appalachian area, with which we are dealing, was an hour and a half and at time and a half, that would be $2.25 a day increased pay, but the point, I think, must be clear that I am making, that in all these discussions, they were not doing what the Illinois Operators did with the United Mine Workers in the Second [fol. 413] Supplemental Agreement, agreeing to change the basis to real portal to portal. That's the distinction.

Q. 14. You are making a legal distinction in the matter of construction rather than making a statement of fact. Have the Mine Workers ever abandoned the claim for travel time?

A. No, not at all. I am not making any legal distinction, not at all. What I am saying, and I repeat, is that while the demand for portal to portal as contained in the first mention of it in the United Mine Workers' demands would appear to be a demand to change from face to face to portal to portal, that that was never urged at all until the Second Illinois Supplemental Agreement was presented, but that that was included in the demand for a wage increase and only after another means was attempted to

work that out. When there couldn't be a direct wage increase then they attempted to work out some basis of pay for travel time so there would be approximately the same amount of additional wages paid, but not subject to the denouncement as strictly a wage increase, because it would be pay for travel time, which the miners, the United Mine Workers, were consistently urging, under the law, was work time. I hope no one would think that I am saying that the United Mine Workers ever abandoned or failed to emphasize their conviction that under the law, as interpreted down South in the case in which you were interested, that travel time was work time. All I am saying is that they never attempted to transfer that thing to a real portal to portal method of computing wages until they found that they couldn't, in any other way, get the wage increase they were seeking.

[fol. 414] Q. 15. This bill of complaint in this case was submitted to you and you helped draft it or went over it and approved it before it was filed?

A. That's correct.

Q. 16. I mean your petition to intervene.

A. Well, the same would be true of both petitions.

Q. 19. And in that petition, there is found this allegation: That your Association, as the bargaining representative of the mines embraced in its membership, has engaged in prolonged and repeated negotiations with said International Union of the United Mine Workers of America, and its subsidiary Districts, from time to time during the year 1943, which negotiations have failed to produce a fresh agreement owing to the opposed positions of the said International Union and the Intervener, respectively, with respect to the principal question of law arising in the present action, to-wit: the question whether within the provisions of the Fair Labor Standards Act of 1938 travel time in bituminous coal mines must be considered as work time and paid for as such. That was a true statement?

A. And is today a true statement exactly of the situation, yes, sir.

Q. 20. You were present in the City of Washington when the First Illinois Agreement was submitted and argued before the War Labor Board and heard the arguments, did you not?

A. That's correct. I listened with great interest to your argument on that day.

Q. 21. I will ask you if it is not a fact that on that day, —early in August, I think around the 4th of August, if it is not a fact in my argument on that occasion, the basis of [fol. 415] my argument was that travel time was work time, and that the miners were entitled to it as a matter of law, and as a matter of working conditions?

A. I do not recall that exactly, but I have no doubt you did make that statement, because that was exactly the position the United Mine Workers were taking, that travel time was work time, but I would also say, having listened attentively to your argument on that occasion, that I do not recall that you suggested in any way an abandonment of the face to face way of computing wages and a substituting therefor of a real portal to portal method of computing wages.

Q. 22. We had not arrived in the negotiations at that time at a statement of the contract, except the First Illinois Agreement, had we?

A. That's correct. You had not yet arrived at the point where you felt you had to change over to the other system in order to get the increase.

Q. 23. I was directing my argument to the Agreement which was then before the Board?

A. Entirely so.

Q. 24. And that, of course, is the proper way for a lawyer to argue a case?

A. Yes, sir.

Q. 25. Our appearance before the Board, leaving out any question of the Smith-Connally Bill, we appeared before the War Labor Board as soon as we succeeded in making an agreement or getting an agreement worked out with [fol. 416] an operating association and getting it signed, didn't we?

A. So far as I know, that was the first agreement made this year that was signed both by the Union and the operators.

Q. 26. Coming back to the demands that the Mine Workers submitted, did you or your Association agree to any one of those demands, whether they be twelve majors or nineteen majors and minors or twenty-four majors and minors, did you agree to any of them?

A. Do you want a specific "yes" or "no", or do you want an explanation?

Q. 27. You might say "yes" or "no", and then explain

A. If I were required to answer "yes" or "no", I would be compelled to say "No", but that would not be a complete answer unless you consider further the fact that the reason we never reached an agreement on some of these apparently minor matters, some of which were later adjudicated by the Board, was because we came to the insurmountable stumbling-block at the very inception, which was the Union's demand for a two dollar a day wage increase, which must be secured in some form, either directly or by including payment for travel time, which they argued was work time, or some other basis,—they must have two dollars, no more or less, and our equal insistence that because in the area we represented, there had been a twenty-five per cent increase since 1941, that we couldn't agree to any wage increase, so we never got beyond that point to consider these various other matters. We did talk about them. That was when I came to know John Saxton very well, was in those discussions. We would discuss the travel time proposition until we became exhausted, and then, in [fol. 417] a state of pure exhaustion, we would talk about cap lamps or some other matter for a little while. The fact that we didn't reach an agreement on any of these subsidiary demands can be understood if you understand that we were butting our heads on both sides against a rock that didn't yield.

Q. 28. You did get to the point that you discussed travel time, didn't you?

A. We did discuss travel time and how it should be paid for, day after day, yes, sir, but we never discussed, to the best of my recollection, never discussed for one moment a change of the system of computing pay to put it on the portal to portal basis.

Q. 29. But when they were talking about wanting pay for travel time, you and your Association took a position that you were opposed to paying for travel time at all?

A. We took this position: We said, in the first place, that travel time was one of the incidents of work in the bituminous mines, and through a long period of collective bargaining, efforts, sanctioned by the Fair Labor Standards Act, it was determined that the most satisfactory way of computing pay was to make it on the face to face time, with whatever proper consideration should be given to average travel time, based on these rates, and we said

that due to the fact that Col. Crampton Harris was able to get the District Court and the Fifth Circuit Court to agree with him that travel time in the ore mines must, under the Labor Standards Act, and under the Administrative Rulings on that, be considered work time, that didn't affect us because we thought not that conditions in the mines were different but that the above ground conditions were very different; that in this industry we had had fifty years of [fol. 418] collective bargaining, culminating in an agreement which had been approved by the Wage and Hour Division, that face to face was the proper method, so while we listened to their arguments that average travel time was an hour and a half in the Appalachian area and ought to be paid for at the basic rates because it was over seven hours, we never agreed to that at all.

Question No. 29, as reported, was thereupon read, by request.

A. Yes, that was our position then and our position now.

Q. 30. And you have done everything in your power, from the time that matter first came up to the present moment to prevent any agreement being reached and put into effect by anybody that would give the coal miners pay for travel time, haven't you?

A. To any other extent than it is paid for in the present rates, the answer is "Yes", and I hope to continue those efforts.

Q. 31. And when the United Mine Workers and the Illinois Coal Operators came to the second Agreement, and it was pending before the War Labor Board, you went to the War Labor Board, did you not, and had them to have a hearing so that you could oppose the approval of that agreement?

A. The answer to that is "Yes", and if you will permit me, I would like to explain that; When the Second Illinois Supplemental Agreement was reached, Mr. Campbell, the President of the Illinois Operators Association, announced they were submitting this agreement to the War Labor Board for approval, with the idea that it would become the basic agreement for the entire industry and [fol. 419] Mr. Lewis, the President of the Union, made a public statement to the same effect, that when the War Labor Board had approved that agreement, it was going to be the basic agreement for the entire industry, and we

didn't want it to be the basic agreement for the entire industry, and have done—

Q. 32. I believe you have misquoted him. Didn't Mr. Lewis say he hoped it would be a pattern for the industry?

A. I accept your statement. We had no objection to the Illinois Operators making an agreement on any basis they wanted to with the United Mine Workers, if it could be confined to the signing parties, but we know, from the statements the parties made, and from the whole history of wage negotiations, once an agreement is made in one area, then by economic and other methods, including the strike weapon, which is of such potency, that once an agreement is made with a single operator, there is no means of preventing it from becoming recognized in application to the entire industry, and as I say, we didn't want to be a party to what Mr. O'Neill described as this destructive move on the part of the Union, and we don't want to be now, and we are going to resist it to the utmost of our power.

Q. 33. As a matter of fact, you made a public statement in substance to this effect, did you not, that if the War Labor Board approved the Illinois Agreement, your Association would not be bound by it?

A. I don't recall such a statement, but I would say if I didn't make a statement of exactly that nature, I would make one very similar to it, not quite in that language, to the effect that whatever agreement may be approved in [fol. 420] Illinois, we will resist its application to the utmost of our power in the Southern Area, with all legal means available to us.

Q. 34. Legal means or other means?

A. We do not have available on our side anything comparable to the strike method which you use so freely on your side.

Q. 35. As a result of your request, the War Labor Board granted a hearing and you appeared and argued in opposition to the approval of the Second Illinois Supplemental Agreement?

A. Yes, sir.

Q. 36. And when the Secretary of the Interior and the United Mine Workers attempted to make an agreement in line with the War Labor Board's ruling, you went to the War Labor Board and told them that you were opposed to it, didn't you, since the agreement of November 3rd, the Ickes-Lewis Agreement?

A. No, I haven't talked to any member of the Board since that Agreement, but if I had talked to them, I would certainly have said what you say, and I think some operators have done so, but I have not.

Q. 37. The reason I asked you, I probably misunderstood you on your examination, that you made it known to the War Labor Board,—your testimony, as I got it, and to Mr. Lewis, that you wouldn't consider that the $40.00 payment had any application to you?

A. I thought you were talking about the agreement as a whole. No, while I have not talked to any members of the War Labor Board at all about the matter, I did write to Mr. Davis, and I wrote to Secretary Ickes, and I will be glad to furnish you a copy of the letter which I have here, in [fol. 421] which I attempted to refute this argument presented by K. C. Adams, that there was any obligation at least outside of Illinois to pay forty dollars or any other sum in settlement of an alleged liability which we deny, and I hope that as a result of my appearance in these two matters, by the sending of those letters, that we have that definitely out of the picture so far as any order from Mr. Davis or Mr. Ickes is concerned. What the parties may do by agreement among themselves, I don't know.

By Col. Harris: Of course, I would be glad to get any information I could without being called upon to put it in evidence.

A. I venture to say that you will agree entirely with me that under the order authorizing the Secretary of the Interior to take charge of the mines, that there is not a scintilla of authority in Mr. Ickes to compel the operator to recognize an alleged liability for a period expiring on June 20th, by its terms, many months before this particular seizure to which they refer took place.

Q. 38. Now, then, you testified that there was an order directing the return to work on June 7th, but I notice that counsel on the other side did not offer any order directing a return to work about June 7th. May I inquire of you or counsel whether they have such an order?

A. I thought there was an order by Mr. Lewis, speaking for the Policy Committee, about that time, directing a return to work. If there is, it should be produced. If it isn't, the statement should be stricken.

By Col. Harris: May I inquire if counsel produced it and I omitted it?

[fol. 422] By Mr. Stuart: We did not produce any order from Mr. Lewis, directing a return as of that date, but it is my understanding such instruction was given.

A. I think it would be safe to say that if the men went back to work about that time, it was on order from Mr. Lewis, because I haven't known of them going back without an order.

Q. 39. In view of that statement, I will ask you if you are familiar with this communication from the Secretary of the Interior to Mr. Lewis?

A. Yes, I have in my book a copy of that and Mr. Lewis' order following it.

Q. 40. You will notice that says: "My Dear Mr. Lewis: As operator of the coal mines on behalf of the United States Government, I expect that you will direct the members of the United Mine Workers of America to return to work on Monday, June 7th. Sincerely yours, Harold L. Ickes, Secretary of Interior". Are you familiar with this reply of Mr. Lewis', dated the same day, June 4, 1943?

A. Yes.

Q. 41. Which is to this effect: "Hon. Harold L. Ickes, Secretary of Interior, Washington, D. C. My Dear Mr. Secretary: I have your letter of June 4th. I have no power to direct. I shall, however, recommend to the Policy Committee of the United Mine Workers of America that it direct the Mine Workers to return to work on June 7th. Sincerely yours, John L. Lewis".

A. That's right, and that's the letter to which we were referring. It was the fact that you referred to it as a June 7th letter that got me confused. It was dated June 4th, di-

[fol. 423] recting them to return to work on June 7th.

Q. 42. In your direct testimony, you referred to the Order of the president. Have you in your files the text of the direction of President Roosevelt to Secretary Ickes, along in October, where he directed Mr. Ickes to offer an agreement of some sort to the United Mine Workers?

A. Yes.

Q. 43. There was some talk of it on your direct examination but that wasn't put in evidence.

A. We would be glad to put it in. I doubt if they have

a copy of it but the official copy is here and copies can be made of it, or of any part you may want.

By the Court: Is there any objection?

By Mr. Stuart: No objection.

By the Court: Let it be stipulated that a copy will be filed in evidence and a copy furnished to counsel.

The document referred to was later filed, marked as:

"Plaintiff's Exhibit No. 44", and is returned as a part of this transcript.

Q. 44. Do you have in your files a statement of the president of the United States, with reference to ordering people under a contract, wherein he stated, in substance, that no man had the right to dictate the contracts of other men?

A. I recall the statement to which I know you are referring, whether that is the exact language or not, it is certainly the substance of it. I know that I have that statement, but I doubt whether it is in this book. I will be very [fol. 424] glad to get it and bring it back with me from Washington when I come.

Witness stands aside.

The Plaintiff Here Rested.

And, thereupon, Court adjourned until Monday, the 22nd day of November, 1943, at 10:00 o'clock A. M., at which time the trial of this case was resumed.

AGREEMENT RE ESTIMATED PROPORTION OF LABOR COST

By Mr. Richardson: An apparent inconsistency between the estimated proportion of labor cost in the total production cost at the Jewell Ridge Mines has developed between the testimony of Dr. St. Clair and Mr. Hagy. Dr. St. Clair has stated that the direct labor cost amounts to approximately two-thirds of the overall production cost. Mr. Hagy stated that the direct labor cost amounted to approximately eighty per cent, having in mind the producing cost of which he had a record at the mine; but not including certain items of administrative and other expenses and overhead. It is agreed that the estimate of two-thirds made by Dr. St. Clair is accurate when all of the items of producing cost are considered.

[fol. 425] And, thereupon, the defendants, to maintain the issues on their behalf, introduced the following evidence, to-wit:

PERCY TETLOW, a witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Col. Harris:

Q. 1. What is your name, please sir?

A. Percy Tetlow.

Q. 2. Major Tetlow, when did you first enter upon the business of mining coal?

A. December 16th, 1887.

Q. 3. How old were you when you went into the coal mines, Major Tetlow?

A. That was my twelfth birthday.

Q. 4. What work was there for a child to do in the coal mines?

A. Well, there was—it was customary in that day for boys of twelve to enter into the mining of coal. They may work at—as a trap-door attendant; they may work with the miner to learn the mining of coal—I worked with a miner and learned the duties of mining.

Q. 5. How long did you work under another miner learning the duties of mining?

A. About a year.

Q. 6. And in those days, as a helper, learning how to mine, how were the miners paid—how were you paid?

A. I was paid the wages that would be earned by one [fol. 426] mine car of coal.

Q. 7. What were those wages?

A. Well, at this particular mine, I would say about forty cents a day.

Q. 8. And then after a year, or approximately a year, learning how to mine, what did you do?

A. Well, I performed all the services that a regular miner would perform, mining coal—that is, undercutting it with hand-picks, which was the method in that day, the drilling of holes, shooting of coal, loading of it, dumping, track laying in the working face.

Q. 9. Did the boys of thirteen use the same size tools that the grown man did?

A. No, they would generally have lighter-weight picks and smaller shovels, but using all the other tools that a miner would use.

Q. 10. Did you have a task basis in those days?

A. That was customary in those days, in each particular mine that I worked in, the task base of so many cars per day, per shift.

Q. 11. In those days, how many hours per day did miners stay underground on an average?

A. Well, it would vary at mines. At the mines I worked in, I would say the average would be about ten to eleven hours a day.

Q. 12. In the winter time, did that mean that you, as a coal miner, while you were a boy, never got to see the light of day except on Sundays?

[fol. 427] A. That was the general rule, because you would be at work long before daylight in the winter time and it would be dark when the day's work was over.

Q. 13. Did you continue to work in the coal mines until the United Mine Workers of America was organized?

A. I did.

Q. 14. When was the United Mine Workers of America organized, approximately?

A. It was organized in January, 1890.

Q. 15. Did you join?

A. I did.

Q. 16. Have you been a member continuously of that Union from 1890 up to the present time?

A. I have.

Q. 17. Have you held any official positions with the United Mine Workers of America, and if so, what positions have you held?

A. Well, I have held many positions.

Q. 18. Would you start chronologically and trace the positions you have held, Major?

A. My first official position was President of a subdivision of the Ohio District. In 1900, I was elected President of that District. I held that office for eight or nine years and the sub-district presidents were members of the Executive Board of the Ohio District. I later became an official in the International Union and held positions with it up until the outbreak of the first World War. I held the position of Statistician and Research Director for the Union, and since that time, I have held a number of positions. [fol. 428] I have acted in the capacity of president of a number of districts and also as Technical Advisor to the President of the International Union.

Q. 19. You speak of districts. Will you explain to the Court how the United Mine Workers of America is organized with reference to locals, districts and the International?

A. The membership of the Union is organized into Local Unions. Local Unions generally have a Local Union at each mine. We have a few instances where there is two or three small mines organized into one local union, and some of our—the next sub-division is sub-districts, which is in many of our districts, the District organization and then the International Union. The Districts are generally not governed by state lines but by producing districts. In Pennsylvania, we have four bituminous districts and three anthracite districts. In West Virginia, we have three districts and some of the miners in the Panhandle belong to the Ohio District, and some in the northeastern counties belong to the Maryland District. Then some of our districts take in a whole state, like Illinois, Iowa, Indiana.

Q. 20. You spoke of a period up to the World War. Did you lose some time from the coal mining business during the Spanish-American War?

A. Yes, I was in the service.

Q. 21. About how many months did you lose from the mining business during the Spanish-American War?

A. I volunteered at the outbreak of the War and I was mustered out on the 28th of December, so I presume about nine months.

Q. 22. And how much time were you out of the mining [fol. 429] business and in the business of war during World War No. 1?

A. I went in in April, 1917, and I was mustered out in April, 1919, just a few days over two years.

Q. 23. Now, you had got up to the point where you were Statistician for the United Mine Workers, International Union. I will ask you whether or not you have held any public office, either State or Federal, in which you were connected with the coal mining industry?

A. Yes, I served as Director of Industrial Relations in Ohio in 1921 and '22, and I had under my direction the mining department and supervision of the inspection force and I was a member of the Bituminous Coal Commission, Federal Commission appointed by the President in 1935, and served as a member of that Commission, the first Com-

mission, and the second Commission of 1937, which continued right through, as the Employe Member of the Commission, and I was Chairman of the Commission during its last year, in 1939, when the Commission was abolished by an Executive Order of the President, and then I stayed with the Interior Department as a Technical Adviser to the Secretary of the Interior and the Director of the Coal Division. I remained there until the minimum prices were made effective on October 1, 1940.

Q. 24. Major, have you, leaving out of account the time you were overseas during World War No. 1, have you been in Europe at any time studying the coal mining business or making any inspections or examinations or familiarizing yourself with the coal mining industry abroad?

A. I have. I have visited most of the mines in Europe [fol. 430] and in the British Isle. I have been a delegate to Mining Congresses and had a chance to study mining in all the countries of Europe.

Q. 25. Major Tetlow, do you know of any civilized country except the United States of America, in which coal miners are not paid on a portal to portal basis?

A. All of the countries of Europe and in Great Britain, the miners have been paid on a portal to portal basis, and including what they call "winding time". Winding time is the shaft time of lowering and hoisting men in many of the deep shafts. I don't know what has happened since the War in Continental Europe, but up until the outbreak of the recent war, in all those countries, the miners were working on what is known as a "bank to bank" or "portal to portal" basis. What has happened since that, I can't say.

Q. 26. Are you familiar with the Constitution of the International Union, United Mine Workers of America, adopted at Cincinnati, Ohio, on November 1, 1942?

A. I am.

Q. 27. I call your attention, Major, to Article Two of the Constitution entitled "Objects", and to the Paragraph designated "Third", which reads as follows: "Third: To demand that not more than six hours from bank to bank in each twenty-four hours and not more than five days per week shall be worked by members of our organization". Could you say approximately how many years that has

been in the Constitution of the International Union, United Mine Workers of America?

A. That provision has been in the Constitution a great [fol. 431] number of years. I couldn't say the exact year that that provision was first placed in the Constitution, but I feel quite sure for over twenty years.

By Col. Harris: We offer, if the Court please, the paragraph designated from the Constitution, as our Exhibit A.

The paragraph from the document referred was thereupon filed, marked as:

"Defendants' Exhibit A", and is returned as a part of this transcript.

By Col. Harris: I might state that some of the older Constitutions will arrive during the day, and I will put them in by another witness.

Q. 28. Does the phrase "bank to bank", Major Tetlow, have the same general meaning as "portal to portal"?

A. It means the same.

Q. 29. In your work as a miner, have you become familiar with the various terms used in the mining industry generally in this country?

A. I have.

Q. 30. What is meant, Major, by "yardage" and "dead work"?

A. Well, the mining of coal is generally upon a tonnage basis, and the miners paid on a tonnage rate for performing all the services incident to the mining of coal. In some mining districts, instead of using tonnage as a base for payment, tonnage rates, they have paid by measurement, so much a yard for mining the coal. That came about as a result of possible questions arising from impurities in the coal, where miners demanded payment for removing impurities, and in order to remove that question, they were [fol. 432] put upon a yardage basis, generally on the basis of twenty-seven cubic feet per ton, to relate yardage with tonnage methods. And then yardage has been paid, in addition to the tonnage rate, for removing slate bands or impurities in the coal. You may have a band of slate, a parting in the coal of different thicknesses, and the miners and operators would agree upon a yardage rate for removing that rock or slate or impurities. That would be in

addition to the tonnage rate, because the impurities displaced coal in the seam, and naturally, there would be more services performed in producing a ton of coal with impurities in it than you would if there were no impurities. The yardage rate was based upon these principles. Dead work is work that a miner performs other than his regular services in mining coal. He may have a fall of slate in his working place, removed from the face,—generally, the working face is defined in most of our districts and by the law as fifteen feet from the working face. He may have a fall of rock; he may be required to remove that. That blocks the roadway. He removes it. It may take fifteen, twenty or thirty minutes or an hour and he is paid on a time basis for that. That's what we call dead work. Dead work is labor performed by the miner other than his regular services in his working place.

Q. 31. You spoke of impurities, slate or other impurities separating the vein of coal. What about the top of the vein where you shoot down rock? What do you call it, or what designation is it for shooting down the slate above the seam of coal?

A. That's called yardage, slate yardage. In many of our mines, it is of varying thicknesses. In the thin seams it is required to shoot the slate over the coal to get height [fol. 433] enough for haulage or for height in the rooms to permit motors or mules or horses to gather the coal, so they shoot down slate or rock above the coal and sometimes they shoot the fireclay underneath the coal, depending upon whether a place is rising or pitching, and that is called yardage, and there has always been a rate for that in mining as long as I can remember, and that rate is based upon so much per inch per lineal yard. That's yardage.

Q. 32. Now, Major, in mining coal, when the coal miner has arrived at or near the face of the coal at the beginning of a shift, can he ordinarily start immediately in the production of coal?

A. It all depends upon what the circumstances were at the end of the preceding shift and what method of mining, whether it was—the coal was undercut with a mining machine, whether it was cut by hand or whether the coal was loaded by hand or loaded by machines.

Q. 33. Let's take these particular mines in which the coal is undercut by machines but it is loaded by hand. Take a

mine of that sort. What would the coal miner normally and ordinarily do at the beginning of his shift after he arrived at the working place?

A. Well, if he had cleaned out, loaded out all the loose coal in the preceding shift, and the machine men should cut the coal, cut the place on the off-shift at night, which many mines do have that system, when he went into his working place in the morning, his place would be undercut, undercut to a depth varying depending upon the length of the cutter-bar of the machine, maybe six, seven, eight or nine feet in depth and the kerf or cutting may be four to six [fol. 434] inches in height. The fine coal that had been cut by the machine,—this machine cuts the coal very fine, the bits cut it out, bits on a chain, cut the coal very fine and the miners' term for that is "bug dust". He would have in a normal place of say twenty-four feet wide, and if it was six inches in height and six feet deep, or nine feet deep, he would have anywhere from maybe two to three tons of this fine coal laying at the face, and some of it in the cuttings, dependent upon the width of the place and the depth of the cut.

By the Court:

Q. 34. Did I understand you to say that the cut itself was six inches in depth?

A. Four to six inches, sir. The cutter-bar would vary so if you had a seam of coal four feet thick, you would have three feet and a half of coal to shoot down and he would find that place cut. Well, now, what he may do first, he may first want to lay track. If the machine men had been in and removed the track at the face, which they are required to do, he may lay down his temporary track, fifteen feet of it, because when these machine men pull in to cut with their cutting machine, they pull in on the track, it's a self-conveyor cutter and in some places they have truck-mounted machines that cut from the truck, but if it's an ordinary shortwall cutting machine, they unload it and start the cut and it's on the floor and when they come to the track, they have to remove the track, it may be in the center of the working place, to cut across, and the miner may have to lay that track the first thing, and, then he, dependent upon what the methods are at the mines,—many companies require that this bug-dust be loaded out along

[fol. 435] with the coal, some allow them to load it separately. Where they can load it separately, they load this bug-dust and get it out of the way so they can shoot the coal free. Then they are required to drill their holes. In an ordinary place, the miner drills three to four holes in a cutting. If they are allowed to shoot in the day time as most mines do, they shoot the coal down and are ready to load. They are required to set the timbers in place. About one of the first things a practical miner would do would be to test the roof and see if any conditions have changed as a result of the elapsed time from the former shift. He may have left the place in perfect condition, the roof sound and well-timbered, and come back in the morning and find a break in the roof, bad top and slate hanging there, and have to timber it before he starts to work. That's about the first thing a miner would be required to do in min-g, test his working place and see that it is safe and he is required to do that timbering and most of the state laws requires a miner to timber fifteen feet from the working place and keep that safe and those are the duties a miner would be required to do in the morning when we went to work.

By Col. Harris:

Q. 35. I don't know whether the slice that's taken out from underneath the coal is clear in the record. As I understand, this machine will cut a stratum or slice from four to six inches thick at the bottom of the coal seam, back in the coal a depth of six, seven, eight or nine feet: is that correct?

A. That's right.

Q. 36. And in cutting, they will, the bits will bring part of that dust out on the floor of the room. Is any of the [fol. 436] dust left up under the coal so that the miner has to get that out with a shovel?

A. Oh, yes, bound to be a certain amount of it left in there.

Q. 37. And I believe you figured that a strip six inches thick, six feet deep, in a room twenty-four feet wide, would amount to approximately two and two-thirds tons of coal, allowing twenty-seven cubic feet to the ton?

A. Yes, whatever the cubic measurements may be, based upon twenty-seven cubic feet to the ton. That's easily

ascertained, if you know the width of the working place.

Q. 38. Major, the miner, in practically all mines, spends more time in his room at his working place than he does in any other part of the mine, doesn't he?

A. Oh, yes. Yes, ordinarily, he is not permitted to run around the mine out of his working place. When he enters it in the morning, he is there until quitting time, as a rule.

Q. 39. Now, then, in your work, both as a miner and connected with the United Mine Workers of America, and as an official, Government and State, dealing with coal mines, have you had occasion to become familiar with the hazards of coal mining with reference to the travel ways or passage ways, main entries, as compared with the rooms in which the miners work?

A. Yes.

Q. 40. Are the conditions in the main entries along which the men walk or are transported and along the other passage ways after they leave the main entries until they get to their rooms, such that accidents are frequent or infrequent?

[fol. 437] A. Frequently, I would say.

By Mr. Richardson: If the Court please, we should like to interpose an objection to the inquiries as to hazards, upon the ground that they are immaterial to the issues here involved.

By the Court: They may have some bearing. I will overrule the objection. Exception may be noted.

Q. 41. Major, in the coal mining industry, are records kept by the United States Government of accidents in mines?

A. Yes, the Bureau of Mines compiles a record of accidents and they are compiled from reports made to the Bureau of Mines and also to the State Mining Departments of the respective states.

Q. 42. Do those records deal with all injuries in mines or merely with compensable injuries?

A. The accident reports to the different states and to the Federal Government, which the Federal Government compiles, is largely the accidents that are so-called compensable accidents, for which compensation is paid, where the workman loses one week or more of his work as a result of the accident.

By Mr. Richardson: If your Honor please, I shouldn't of course, wish to interrupt unnecessarily, but may I understand that to the line of questions along a subject as to which an objection has been interposed, that objection will be applicable throughout?

By the Court: That has been so far the procedure and it may be understood that your objection goes to all the interrogation of this witness along this line.

Q. 43. Have you the Government figures showing the number of fatal accidents in the coal mines of America in the year 1941?

[fol. 438] A. I do not have the Bureau of Mines Report as such, but I have the figures, sir.

Q. 44. Would you give us those figures, please, sir.

A. The Bureau of Mines Report for 1941, Total Fatal and Non-Fatal Accidents, Bituminous Coal Industry—Fatal Accidents: 1075. There were 66 accidents which resulted in permanent total disability; there was 1960 permanent partial accident-, and there was temporary injuries of 44,641, making a total of 47,742.

Q. 45. Approximately how many men, in your judgment, were employed in that industry during that year?

A. In 1941, approximately 450,000, I will say.

Q. 46. So that those figures show that during the year one man out of every ten or slightly in excess of one man ought of every ten was injured in the coal mines of America?

A. Yes. I am sure that the average would be about one to ten. I know the Bureau of Mines has not completed its 1942 report. In 1942, we had about 66,000,000 tons increased production over 1941, so at that ratio of increased production, increased exposure, it would be fair to state that the accidents in 1942 would be approximately the same percentage of increase in accidents as increased production, because you had increased exposure, and the records, accident records show that based upon exposure, time exposure, and the ratio of accidents run pretty uniformly throughout the years. You can't determine the ratio by tons produced, because increased productivity changes that increase per capita, and increased production generally is the result of mechanization, so the only way to determine that is on the basis of exposure.

[fol. 439] Q. 47. When does the exposure start, when the miner enters the mine or when he arrives at his working place?

A. When he enters the mine.

Q. 48. What hazards is he subject to when he enters the mine and before he reaches his working place?

A. Well, if it is a shaft mine, where men are lowered—

Q. 49. Let's leave out the shaft mine and consider,—I believe you call this a drift mine, where they go in on the horizontal, with the seam of coal running up hill and down dale some what.

A. Well, the hazards of mining are such that when you enter a mine, you naturally meet the hazards that may occur in entering a mine, whether you walk in or drive in on a haulage trip. If you are going in on a haulage trip, you have the normal hazards that apply to haulage underground. Walking, you have that, and in some mines you have a greater hazard than others. If a seam of coal is thin and men are required to travel on traveling routes in which there is motor yards on which motors and haulage is used, that exposed wire would be possibly at a height that a man could contact it with his head and body, and you would have a greater hazard in a thin seam where you were going where there was exposed wires than you would in a thick seam. You have always got those hazards. You have the same hazard from traveling on a haulway from bad roof, falling roof, where timbering has been neglected. You have the hazard of being killed by falling slate or rock the same as you would at the face of the coal. Ordinarily, you have more falls of rock on haulage and traveling roads than you do at the face of the coal. The only question is when men are traveling, they may be traveling under the particular rock that falls. When you [fol. 440] are at the face, you are in that confined area and you naturally get injured from that fall of rock more so than you would on the traveling road, but I think all the State Mining Reports and Government Reports break down those accidents as to the nature of them and the place where they occurred, whether at the face of the coal or on the haulage way or room, or explosions from gas or coal dust of whether it is the result of handling explosives or whether it is the result of falls of slate, or what not. Those accidents are broken down. I do not have them with me.

Q. 50. Is the hazard an ever-present hazard to the men

in the mines from the time they enter until the time they come out of the mines?

A. Yes, that's true. It must be so. Understand, a man traveling in the mine in the dark, even though he has the most modern electric light, his range of vision is narrowed, he can only see a few feet, he is always in danger of falling or tripping over ties or over the traveling road, and the danger from falling and being injured, and not being able to see the danger. The average man traveling along a haulway or traveling road, he can only see a short distance, as his head is hung down if it is a low place, and he is required to crouch, he can't see the roof, he is watching the travel road to see that he don't stumble or fall. A man can be injured going in the mine if there happens to be an explosion in the mine, he can be injured there as readily as he would in any other section of the mine. And a lot of these haulage roads, which are travel roads, many of them, you have a constant difficulty of keeping clearance along these haulage roads or travel roads so workmen going in and out while the haulage is under way, motors [fol. 441] running in and out, for clearance or man-holes, where they can step in in safety while the trips are passing, and we have many accidents of that nature.

Q. 51. You have many accidents, do you not, where the man-trips are wrecked?

A. Well, there is accidents occur from trips being wrecked. As I said, you have always that hazard of transportation. Transportation underground and transportation outside is two different things.

Q. 52. You mean transportation underground is more dangerous?

A. That's right. You take hauling a man-trip or a motorman hauling coal, he passes over that road many times a day on that haulage road. As he is going in with a trip, by the time he comes out, there may be a timber broken down with the weight of rock, and it falls on the haulage road and this man comes out, and if he is going at a normal speed and there is a fall of slate, he may not get his motor stopped and trip stopped, and he runs into it and gets killed or injured. There is always these hazards in mining which endangers transportation different from what you find outside, because most of the disrupting danger comes from the falling rock that falls on the travel roads.

Q. 53. Major, in your work with the United Mine Workers of America, have you participated in wage conferences or wage negotiations?

A. Yes, I have, since 1900.

Q. 54. How are the demands which the Union makes upon entering a wage conference arrived at by the Union? Who determines—what I mean to ask is this,—who determines [fol. 442] what demands will be submitted to a wage conference?

A. The legislative body of the Union, of course, is its conventions. The conventions are composed of representatives from each of our Local Unions, based upon the membership of the Local Union, and the delegates to these conventions formulate its laws and its policies. They adopt wage scale proposals and from these actions and resolutions adopted in the convention spring the proposals that are submitted to the coal operators in the wage negotiations. In the last convention, the last two or three conventions, the organization, that is, through the delegated authority, have created a Policy Committee, composed of the International Officers, District Officers and men elected directly from the mines which compose a Policy Committee with authority to negotiate and to consummate agreements, and that's the normal process in collective bargaining in the coal industry for the Miners' Union.

Q. 55. Are those demands usually submitted to the operators in writing or orally?

A. In writing.

By Col. Harris: I am not sure whether the gentlemen on the other side put in the wage demand of the 1943 negotions or not.

By Mr. Richardson: No, sir.

Q. 56. Major, before I go into the details of these conferences, will you state to the Court just what your official connection with the conferences was?

A. As a member of the Negotiating Committee and also [fol. 443] Chairman of the Negotiating Committing for the Southern Wage Conference group.

Q. 57. You mean Chairman of the Committee from the standpoint of the Miners?

A. That's right, sir.

Q. 58. And was that the group in which the mines located in this part of Virginia, including the mines in quesyion,

those of the Jewell Ridge Coal Corporation, Jewell Ridge and Jewell Valley, are they in the Districts covered by that Conference?

A. By the Southern Wage Conference.

Q. 59. Now, I show you a paper, Wage Scale Proposals for the Bituminous Coal Industry, adopted by the International Policy Committee of the United Mine Workers of America, New York, New York, March 9th, 1943. You are familiar with that document, are you not?

A. I am.

Q. 60. Is that the wage demand which the United Mine Workers submitted to the operators in New York, in March, 1943?

A. That's right.

By Colonel Harris: We offer this as Exhibit B.

The document referred to was thereupon filed, marked as: "Defendants' Exhibit B", and is returned as a part of this transcript.

Q. 61. Major, as an expert in the coal business, without going into all the elaborate ramifications, but as a summary, was it your understanding that the United Mines Workers of America were demanding a wage increase of $2.00 per [fol. 444] day, and in addition to that, pay for travel time?

A. Certainly not.

Q. 62. Has the position of the Mine Workers with reference to their demands been accurately presented so far as you know, in public declaration by any Governmental agency or by any Operators Association?

A. I will say it has been very confusing.

Q. 63. You said, I believe, that from the standpoint of the United Mine Workers you were in charge of the Negotiating Committee with the southern coal producers. Did you continue to be in charge as long as you were in negotiation?

A. Yes, sir.

Q. 64. And have you kept familiar with the various proceedings before the War Labor Board?

A. Yes, sir.

Q. 65. During the present year?

A. Yes, sir.

Q. 66. There was introduced an opinion by the War Labor Board, dated October 29th, 1943. I am under the impression and I inquire of the gentlemen on the other side,—I am

under the impression that you gentlemen did not introduce the dissenting opinion of the A. F. of L. members of the Board. Am I correct in that?

By Mr. Stuart: Which is that you are talking about?

By Col. Harris: October 29th.

By Mr. Richardson: Couldn't we determine that more accurately by looking at the exhibit and seeing what it con-
[fol. 445] sists of?

By Mr. Stuart: We didn't introduce any decision of October 29th. We did of October 26th, which is the decision of the Board on the Illinois Second Supplemental Agreement.

By Col. Harris: Here is the document to which I refer.

By Mr. Stuart: Plaintiff's Exhibit No. 40-A is dated October 26th, 1943, and is the decision of the National War Labor Board in the matter of Illinois Coal Operators Association and United Mine Workers of America. That shows that a dissenting opinion was filed by the American Federation of Labor Members. Yes, that's in.

By Col. Harris:

Q. 67. Major, in your work in the coal industry, have you become acquainted with Mr. Charles O'Neill, an official of the Central Coal Producers Association?

A. Yes.

Q. 68. How long have you known him?

A. Thirty or thirty-five years.

Q. 69. Has Mr. O'Neill, as the representative of that Association, met with you and other officials of the United Mine Workers of America in wage negotiations during the year 1943?

A. Yes, sir.

Q. 70. Did the Association of which Mr. O'Neill is President, submit to the United Mine Workers a proposed form of agreement on June 14, 1943, recognizing and paying for travel time?

A. He did.

By Mr. Richardson: If your Honor please, as to what the agreement recognized and provided, that would be determined best by the agreement itself.

[fol. 446] By the Court: I think that comment is sound and it is so considered.

Q. 71. Major, I hand you a document dated June 14, 1943, headed Washington, D. C., marked "Supplemental Agreement", and will ask you to examine that and state whether that is the agreement or proposed agreement which was submitted by Mr. Charles O'Neill on or about June 14, 1943, to the United Mine Workers of America, in wage negotiations in the city of Washington, D. C.

A. Mr. O'Neill and other representatives of the Central Pennsylvania Coal Producers Association met with the conferees of the United Mine Workers and were endeavoring to reach an agreement for the Central Pennsylvania Coal Producers Association, and at this time, Mr. O'Neill and his Association had withdrawn from the Appalachian Conference and sought to make an agreement with the Union and on June 14th, 1943, Mr. O'Neill, as spokesman for his group, representing the Central Pennsylvania Coal Producers Association, did make this proposal.

By Col. Harris: We offer that proposal in evidence, if the Court pleases, and I desire to call the attention of the Court to this language, without reading all of it.

Col. Harris thereupon read paragraph 1 of the offered document.

By the Court: Is there objection, gentlemen?

By Mr. Richardson: Yes, sir.

By the Court: Let it be admitted, under the same conditions as the other documents.

Q. 72. Major, are these wage negotiations, in which I believe you have said you have participated since 1900, are they matters which are ordinarily quickly concluded or do the negotiations last for days or weeks or months?

[fol. 447] A. In recent years, since 1933, these negotiations have been very extended and lasted for months.

Q. 73. In all your experience since 1900, in these wage negotiations, has there ever been a time in any wage negotiation when the coal operators agreed to the demands submitted by the Union when those demands were first submitted?

A. Never.

Q. 74. Did you, subsequent to June 14th, 1943, appear as a representative of the International Union, United Mine Workers of America, with or before the Secretary of the Interior, Mr. Ickes, during the month of November in a conference with the operators? That is, during the present

month, did you appear before the Secretary of the Interior?

A. I have.

Q. 75. Did you also appear before the War Labor Board in their last hearing on the Illinois contracts, the second supplemental agreement? To refresh your recollection, that was the hearing in which——

A. The public hearing?

Q. 76. The public hearing in which you and I appeared?

A. Yes, sir.

Q. 77. Now, the various orders of the War Labor Board on the Ickes-Lewis Agreement of November 3rd have been put in evidence, but as I understand it, there was a letter of re-submission and clarification from Secretary Ickes to the War Labor Board?

A. Yes, there was.

Q. 78. Have you a copy of that letter of clarification? If [fol. 448] the Court will excuse me, I will go back. I overlooked one instrument I have here.

At this point, a recess for the period of ten minutes was taken.

By Col. Harris:

Q. 79. Major Tetlow, I got ahead of myself on my documents a moment ago and was about to overlook the next exhibit I had in mind. Major, during the month of September, 1943, did you participate in wage conferences in the city of Washington, representing the United Mine Workers of America, with conferees representing the Appalachian General Conference?

A. I did.

Q. 80. Was Mr. Charles O'Neill a member of that conference?

A. Yes, sir, he was.

Q. 81. Now, tell the Court, please, who constituted the Appalachian General Conference, or Joint Conference, from the standpoint of the operators?

A. The Appalachian Joint Conference is composed of Operators Associations and Operators from Ohio, Michigan, the Panhandle District of West Virginia, Northern West Virginia, and the bituminous districts of Pennsylvania and Maryland.

Q. 82. Were those conferences going on at the time that the Illinois Operators were in Washington negotiating or

waiting to negotiate the Second Supplemental Agreement, dated the 23rd day of September, 1943?

A. They were. They were running concurrently.

Q. 83. And I will ask you to tell whether or not the conferees for the operators, represented by Mr. Charles O'Neill, submitted to you and your colleagues representing [fol. 449] the United Mine Workers of America a proposed form of contract dated or marked "Fourth Draft—September 12, 1943"?

A. After the Central Pennsylvania Coal Producers Association had submitted their proposal, the Appalachian Operators Group was re-constituted, in which Mr. O'Neill joined with the other coal operators Associations in the Appalachian North, and this proposal was submitted by Mr. Ireland, who was the spokesman for that Group. We had been exchanging proposals and this was the fourth draft of the Operators' proposal that had been submitted to us. Mr. Ireland, Mr. O'Neill and Mr. Van Horn was a sub-committee representing the Appalachian Coal Producers, and this is the proposal that Mr. Ireland submitted in behalf of those associations.

By Col. Harris: We offer in evidence, if the Court please, as "Exhibit D", this proposal, and call the Court's attention to the following language, without reading all of it:

(Col. Harris thereupon read paragraph 1 of the offered document).

By the Court: Is there objection to the introduction of the document?

By Mr. Richardson: We do object, Your Honor, on the ground that it is immaterial, it has never been consummated and has no relevancy to this issue here. We understand that if this were Mr. O'Neill's agreement, there might be some occasion for admitting it, in reference to Mr. O'Neill's testimony, but as we understand, the first agreement which Major Tetlow introduced was Mr. O'Neill's agreement, namely, the Central Pennsylvania Coal Producers Association Agreement. This is what has been generally known as Mr. Ireland's agreement, and relates to another area which I did not understand included the Central Pennsylvania Coal Producers Association. For those reasons, we object to this document.

[fol. 450] By the Court: I will treat your objection as a motion to strike it out and will take it under consideration, and at this time permit the introduction of the document.

By Col. Harris: If I haven't made it clear that this was Mr. O'Neill's proposal as well as the other, I want to return and ask some more questions.

By the Court: You made it clear that Mr. O'Neill was a member of the Committee which submitted the proposal.

By Col. Harris:

Q. 84. Major Tetlow, after Secretary Ickes and Mr. Lewis entered into their agreement of November 3rd, 1943, the war Labor Board, on November 5th, handed down rulings and asked for letters of clarification or asked that the point on tonnage workers be clarified. I will ask you whether or not the Secretary of the Interior sent a letter of clarification to the Chairman of the War Labor Board?

A. He did.

Q. 85. Did he also send a copy of it to Mr. John L. Lewis, President of the International Union, United Mine Workers of America?

A. He did.

By Col. Harris: The document to which I refer first has the accompanying letter to Mr. Lewis, dated November 12, 1943, and then the letter from the Secretary of the Interior to Mr. Davis on the stationery of the Secretary of the Interior, Washington, dated November 12, 1943. I call the Court's attention to paragraphs 3 and 4 of the letter from the Secretary of the Interior to Mr. Davis, Chairman of the War Labor Board.

Col Harris thereupon read the paragraphs referred to from the offered documents.

[fol. 451] By Col. Harris: If I may be permitted to state here, if the Court pleases, and presumably, it has been difficult for you to carry all these documents in your mind, the Illinois Second Supplemental Agreement provided that all men who had been on the payrolls of the company from April 1 to June 20, 1943,——

By the Court: That's the $40.00 provision?

By Col. Harris: The $40.00 provision and what the Secretary is referring to here is that that is not applicable to the Government. I offer this as Exhibit E.

The documents referred to were thereupon filed, marked as:

"Defendants' Exhibit E," and are returned as a part of this transcript.

By Col. Harris:

Q. 86. Now, did Mr. Lewis, under date of November 12, 1943, make reply to the letter from the Secretary of the Interior to him, enclosing a copy of the letter to Mr. Davis that I have just read from?

A. Yes, sir.

By Col. Harris: That is a part of the Exhibit, Your Honor, and I will read a part of it to you.

Q. 87. Now, thereafter, and by thereafter, I mean subsequent to November 12, 1943, Major, did you attend further conferences with coal operators in the city of Washington, D. C.?

A. Yes, sir.

Q. 88. Was Mr. Charles O'Neill a member of those conferences in November of this year, that is, this present month?

A. He was.

Q. 89. Where were those conferences held and under what [fol. 452] circumstances?

A. They were called by Secretary of the Interior Ickes. The operators and miners were requested to meet in his office for the purpose of making an agreement, based upon the War Labor Board's directive or decision, and they were held in the Conference Room on the Fifth Floor of the Department of the Interior.

Q. 90. Do you recall the exact date on which those conferences began, Major?

A. I think they began on the 16th of November. That would be last Tuesday.

Q. 91. That was on Monday, was it?

A. I think it was Tuesday, sir. I think the Secretary of the Interior addressed the two groups on Monday, but I think the conferences began on Tuesday, if I remember correctly.

Q. 92. And Mr. O'Neill was there representing his association?

A. He was representing the Central Pennsylvania Coal Operators Association.

Q. 93. And were there other representatives besides Mr. O'Neill?

A. Yes, there was a great number.

Q. 94. Do you recall approximately how many millions of tons of annual production were represented in those conferences?

A. Yes, at the beginning, I think, there was about 270,000,000 tons of annual production and later on in the week, it increased to 311,000,000 tons represented. I may say that in those conferences practically all of the operators associations and operators were represented with the exception [fol. 453] of the Southern Wage Group.

Q. 95. Did the Southern Wage Group make any statement then or shortly thereafter that when the Labor Board clarified the tonnage provisions, they would join the conference?

A. They did.

Q. 96. Now, on November 18th, 1943, Thursday, did Mr. Charles O'Neill's group submit a proposition of settlement, —that was last Thursday, and as I recall, the day he was here testifying in Court,—did his group submit the proposal which I hand you?

A. Yes, this is the proposal that was submitted by the operators to the miners on November 18, 1943.

By Mr. Stuart: I understand that was submitted by the Central Pennsylvania Group?

By Col. Harris: That's right, and the other groups representing 311,000,000 tons, as I undertood it.

By Mr. Stuart: I understood from your question it was Mr. O'Neill's group but I don't understand it from Major Tetlow's answer.

A. The group was composed of Operators Associations and Operators from all the Districts other than the Southern Wage Group. It included Alabama, who was in attendance, and Mr. O'Neill, who was representing the Central Pennsylvania Coal Producers Association and spoke for them in the conference.

Q. 97. And this proposal was submitted by the Group of which he was a party?

A. Right.

By Col. Harris: We offer this document as Exhibit "F".

[fol. 454] By the Court: Is there objection?

By Mr. Richardson: Yes, if Your Honor please, we submit it is not relevant and as to the issues here, it is a thing done between other people.

By the Court: That is largely true. However, there has been some evidence about these conferences and it may have some materiality, and in any event, I am going to admit it, treating the objection as a motion to strike, so the position of the plaintiff may be preserved.

The document referred to was thereupon filed marked as:

"Defendants' Exhibit F," and is returned as a part of this transcript.

Q. 98. Thereafter, did the War Labor Board issue instructions or any—whether that be the correct word or not, any rulings with reference to tonnage workers, with reference to instructions to be sent out about tonnage workers?

A. Yes, on last Saturday the War Labor Board, based upon the letter of the Secretary of the Interior, which clarified the two questions that were in dispute, one of them the application of this formula to the tonnage workers, and the question of car pushing or spotting of cars,—the war Labor Board acted upon that clarification on Saturday and issued these instructions or decision on those two questions, in which they modified to a slight degree the clarification made by the Secretary. That was Saturday, I think about six o'clock when they issued their instructions to the Secretary of the Interior.

Q. 99. I hand you, Major, a document headed "Office of War Information—National War Labor Board, For Immediate Release—November 20, 1943, and I might inform [fol. 455] the Court that we have not had an opportunity to get this document copied.

By Mr. Stuart: We have copies.

By the Court: Pretty contemporaneous. You refer to the day before yesterday.

A. Yes, that's the letter, that's the release and the letter that was addressed to the Secretary of the Interior by the War Labor Board.

By Col. Harris: And that's signed by William H. Davis, Chairman, and then there is another page, marked "5",

with the dissenting opinion by Wayne L. Morse, and on the back, the opinion of the Industry Members. We offer all these Pages in evidence as Exhibit "G".

By the Court: Is there objection?

By Mr. Stuart: No, sir.

The documents referred to were thereupon filed, marked as:

"Defendants' Exhibit G," and are returned as a part of this transcript.

Q. 100. Major, were instructions prepared in Washington and sent out to operating managers of bituminous coal mines throughout the United States, in line with the exhibit I have just introduced, telling the operating managers how to compute the tonnage workers' rates and the rates of other men, so they could make up their payrolls?

A. Yes, they were sent out Saturday evening late.

By the Court:

Q. 101. By whom?

A. By the Department of Interior.

By Col. Harris:

[fol. 456] Q. 102. I show you these thin sheets, which were attached to your exhibit there and ask you if these sheets, which we will have to number numerically constitute the instructions sent out by the Secretary of the Interior on Saturday night last to all operating managers of bituminous mines throughout the United States?

A. Yes, these are the instructions.

By Col. Harris: We offer those as Exhibit "H".

By the Court: Is there objection?

By Mr. Richardson: I don't believe so.

The sheets referred to, bound together, were thereupon filed, marked as: "Defendants' Exhibit H", and are returned as a part of this transcript.

Q. 103. Major, there has been some discussion in the case and some testimony in the case about price fixing agencies of the Government and their function in the coal business with reference to competitive conditions. First of all, you stated a while ago that the United Mine Workers are divided into Districts, I believe?

A. The Union, the organization,—divisions, right.

Q. 104. Now, is the coal industry of the United States divided into recognized districts or fields, according to the nature of the coal mined?

A. The industry, for the purposes of the bituminous coal act, and the act defines producing districts and also price areas, which were composed of districts and also marketing [fol. 457] areas. Those have been continued by the Department of Interior under the direction of the President and are now in existence for the purposes of control over maximum prices rather than minimums.

Q. 105. Major, is the coal throughout the eastern part of the United States in the bituminous areas of the same uniform quality?

A. No, there is a great variation in the kinds of coal and the qualities.

Q. 106. The field here in Virginia is known as a low volatile field, isn't it, or the coal produced is known as low volatile coal?

A. Yes, it is known as District No. 7 and termed the smokeless field or the low volatile field.

Q. 107. Now, what effect have those agencies of the Government had on the development of coal mining in the area in which these mines are located in the low volatile or smokeless field?

A. The effect of the operation of Government regulations?

Q. 108. Yes, sir.

A. I think it has been wholesome and contributed greatly to the stability and the prosperity of the field.

Q. 109. Before these Governmental agencies were established, how was coal sold with reference to its heat-producing content?

By Mr. Stuart: May we know what Governmental agencies are referred to?

By Col. Harris: The Bituminous Coal Commission is one, I believe, and the price-fixing group, I don't know personally what their name is.

Q. 110. What agencies of the Government have had to do [fol. 458] with the fixing of prices of coal in the last few years, Major?

A. The Bituminous Coal Commission up until the Commission was abolished by Executive Order in 1939, and

since that time, by the Bituminous Coal Division, Department of Interior.

Q. 111. Before the Bituminous Coal Commission was established, was there any uniform standard adopted throughout the coal industry, upon which coal was bought and sold, as to quality?

A. No, there was no standards fixed for the marketing of coal other than what some consumer may require for his special use, which would be a matter of contract negotiations between the consumer and producer.

Q. 112. Did the Government, the Bituminous Coal Commission, install standards due to the heat-units produced, the ash content, and other things affecting the value of coal?

A. Yes. Under the law, that was a requirement and the Coal Commission made a study and held hearings and made findings upon the quality of the coals produced in each mine in the United States, governed by the act, and the act governed bituminous coal mines, sub-bituminous or lignite coals, which, of course, included all the coals of the—bituminous coals of the United States, so-called bituminous coals.

Q. 113. What effect did that have on the coal in the smokeless or low volatile field, the marketing?

A. It fixed the relative value of coal delivered in common consuming markets, based upon the heat units, the sulphur content, the moisture, the fusion point of the coals, and established prices based upon the relative values of those coals delivered in common consuming markets. It established to consumers and users of coal a basic understanding of the qualities and the kinds of coal to be adapted for spe- [fol. 459] cial use or purpose use, which was wholesome and desirous.

Q. 114. Did that redound to the advantage of this area?

A. Very much.

Q. 115. Major, I believe when you entered the mining of coal, the fine quality, I mean in size, the small sizes of coal that you happened to mine were not paid for, were they?

A. You mean to the miner?

Q. 116. To the miner?

A. No, in the early days and up until 1913, practically all of the wage agreements that the miners had, and prior to the wage agreements, the miner was paid for coal on a screened coal basis.

Q. 117. What did that mean?

A. That would mean when agreements were negotiated, the agreements would provide that he was paid for all coal that passed over a screen, over an inch and a quarter screen. Any other coal under the size of an inch and a quarter passed through the screen and only the coal that passed over the screen was paid for.

Q. 118. Now, today, do the miners get paid on a screen basis or for all the coal?

A. No, they are paid on a run of mine basis, which includes all the sizes and all the merchantable coal that is produced.

Q. 119. During the years that you have been connected with the United Mine Workers, have they consistently and uniformly, in their wage demands, attempted to get better working conditions, shorter hours and higher wages?

[fol. 460] A. Yes, the function of the Union and the purposes of its organization was to improve the living conditions and the working conditions of the miners.

At this point, a recess for the period of fifteen minutes was taken.

Cross-examination.

By Mr. Richardson:

Q. 1. Major Tetlow, bearing in mind your early experience, I dare say you were quite happy to see the Fair Labor Standards Act expressly forbid child labor?

A. Yes, and I was glad that the different states and the legislative bodies had made substantial progress in eliminating it and that through collective bargaining, it was eliminated. It is certainly—we are to be congratulated upon any progress we have made in that direction.

Q. 2. Pains were taken to provide in that Act for the express and clear elimination of that abuse, if we may now call it such? I believe I shall ask you to speak in answer to my question so the reporter may get your answers clearly.

A. Yes, sir.

Q. 3. Did you take any part in the formulation of the Fair Labor Standards Act? Did you appear before either of the Committees of the Congress while that Act was under consideration?

A. No, I did not.

Q. 4. Do you know whether your organization had representatives so appearing?

A. I can't say whether they did or not.

Q. 5. Was there at any time any expression made in be- [fol. 461] half of your organization to declare before the Congress or any committee of the Congress its purpose, by the provisions of the Fair Labor Standards Act, to change the basic work day on basis of pay within the industry?

A. No.

Q. 6. And I assume the same is true in respect to consideration of these matters before the National Recovery Administration, is it not? If you will cast your recollection back to 1933, when the National Industrial Recovery Act under, I believe, General Hugh Johnson,—when a Code of Fair Competition for this industry was being considered, and at that time other witnesses both from employers and employes appeared, there was not at that time any representation made, looking to a change in the work day or the unit of pay?

A. No, the Miners' organization has always taken the position that the question of wages, hours and conditions of employment should be governed and controlled by agreements under collective bargaining in the industry more so than by legislation. We have always taken the position that any legislation which will improve standards of working men and women,—to favor it and foster it and support it. Fundamentally, we are opposed to legislation that controls the daily wage and conditions of employment. We think that is a relationship that should exist between employer and employe.

Q. 7. And you feel that this area should be kept open for complete freedom of the parties by collective bargaining to contract as in the circumstances they may be advised to do so?

A. As a general principle, I said yes. Certainly, any law [fol. 462] that governs—law, of course, comes first. Any contractual relationship must be based upon standards of law. That's fundamental, too, and any legal standard, by law, that governs employment or restricts—we certainly favor that. No organization, no people can endeavor to set aside law in this country. They must conform to it, but as a general proposition, as I said, and I restate it, the United Mine Workers have always felt that any relationship with their employer, and because of the competitive conditions existing, it was necessary to have a wage structure of general application in all the producing districts because of the.

competitive nature of the industry. They were striving for uniformity because they knew that the competitive relationships were such that unless these standards were applied uniformly, it would prevent and destroy the carrying out of any agreement.

Q. 8. Then throughout your experience you say that the Union has recognized the highly competitive character of the bituminous coal industry and has endeavored to adapt its requirements and demands to those competitive conditions?

A. That's right, sir.

Q. 9. And one of the means by which it has endeavored to make such adaptation has been to arrive at uniformity in the cost of production throughout the industry?

A. No, not uniformity as to cost, and when we are talking about cost, we are talking about the cost of producing a ton of coal, but uniformity as to wages and earnings of men. You may have conditions in two mines where a man would produce five tons in one and seven in the other, and it took as much labor to produce the five tons as it did the seven, so we have argued and striven that the miner who performed [fol. 463] the service, like service, in one field or another, should receive equal compensation. If you are familiar with the industry, we have districts with per capita production around three tons per day and other districts as high as eight and ten tons per day. We have contended and our arguments and our policies have been predicated upon the principle of the men who render service for a number of hours should be paid equally. That's not been possible in complete fulfillment but to that goal we have been striving all through the years.

Q. 10. Then shall I say that you have, in your agreements, made concessions to the recognized necessity of uniformity of producing cost in order that the known competitive conditions might be met?

A. No, no. Just the reverse. We haven't attempted to make wage rates upon a basis of equal cost of production per ton, but upon equal service rendered and time as a basis for proper renumeration for men who perform the service. Now, in an industry such as we have, it is certain that some mines with higher costs than others have advantages that overcome the low cost mines. They may have it in transportation cost, they may have it in some other factors which lower the cost, or they may have an advantage

in quality in part' lar markets where high cost mines exist as against l cost mines, successfully, so we have striven for standard rates of pay in all producing districts whether on yardage, per ton or day work, piece or day work base, that equal performance of equal service should be given equal pay. That's been the Union's position throughout the years.

[fol. 464] Q. 11. Now, if a seam had in it a small parting under four inches, that would be a handicap in the way of successfully operating that mine and the competitive offering of that coal in the general market, would it not?

A. Well, there is very few seams of coal that is clean and free from impurities. In every area, you have mines, the seams of coal with partings in them, and impurities that must be removed. That's an actual condition that exists generally in all fields.

Q. 12. And you have agreed that where there is such a condition, and the parting does not exceed four inches, then the miner shall remove that parting, handle it as may be necessary, without additional compensation over his per ton pay for mining the coal; is that not so?

A. That's true. You may have a local agreement or district agreement and most of those questions of dead work rates of pay are subject to local or district adjustments because of the local conditions, which vary, and these dead work rates some times provide that the miner shall perform a certain amount of dead work service without compensation, which is included in the tonnage rates.

Q. 13. And just such a provision is included in the Pocahontas-Tug River Agreement, which I hand you, is it not, Major? That is the 1941 Agreement, I forgot the exact exhibit number.

A. Yes.

Q. 14. And if you will hold that just a moment, on the next page a similar provision is in relation to the draw slate or over-burden, if that does not exceed four inches?

A. That's right. That's a provision of this district [fol. 465] agreement.

Q. 15. The Booklet shown you is Plaintiff's Exhibit No. 9. —That is to say, if a miner working in a mine where there is a four inch parting and a four inch over-burden of draw slate that falls with the coal, is required to handle that parting and that overburden, he would not be paid as much for the same work as he would be if he were in a mine in

which there were no such parting at all and no such over-burden which falls with the coal?

A. That's correct.

Q. 16. And the agreement that he would do this relatively small amount of extra work incidental to his mining was a concession to the competitive requirements?

A. No, I don't think so. I don't think it had anything to do with the competitive requirements. It had to do with the ability of the miner to earn. You may have a mine—as in this agreement just shown me, this Pocahontas-Tug River Agreement, which provides that the miner shall perform that service up to four inches of impurities in the seam or slate over the seam and remove it without additional compensation. He may have other factors that is available to him where he may be able to load as much coal as a miner that had all clean coal. You have many conditions, such as roof conditions and water and all those things which men are required to meet in mining, and where you may have a disadvantage in one mine in respect to impurities in the coal, you may have advantages that overcome that disadvantage as compared to another mine. We have mines where the cost of pumping water is enormous. We have other mines where there is no water,—in fact, they put water into the mine, and we have mines where you can mine [fol. 466] the coal without any timber methods of mining, practically no timber at all, and we have other mines where the timber costs will be eight, ten, fifteen cents a ton. All of it goes into the ability of the producer to market his coal and successfully compete. Where mines that have great disadvantages are operating, it is apparent that there must be advantages which he enjoys that permits him to continue to operate and to live. The very fact that mines exist and are operating is indicative of the fact that whatever disadvantages they may have, they have advantages accruing that off-sets the disadvantages.

Q. 17. By way of measuring the material that might be involved in a four inch parting and a four inch over-burden of draw slate, recalling your computations a while ago, that could involve at the typical working place up to four or five tons a day, might it not?

A. Yes, because the slate or *co* would be heavier than the coal and it wouldn't take as many cubic feet of rock to equal a ton of coal.

Q. 18. Now, these local conditions to which you refer would be well known to the district representatives of the Union who would make the local agreement?

A. Yes.

Q. 19. And the variations to which you refer as between mines might also exist within mines?

A. That's right.

Q. 20. The contract provides, I believe, that the coal loader, who, of course, is a piece worker, shall do certain things incidental to his loading of coal, and that has always [fol. 467] been recognized as a necessary part of his work, has it not?

A. Yes. The tonnage rate includes certain services that the miner is required to do other than the actual mining and loading of coal. In practically all of our agreements, and as a requirement of law in the respective states, the miner is required to protect himself fifteen feet from the working face; he is required to do the timbering there and make that place safe unless it is timbering that goes beyond the ordinary timbering of setting mine props and cap pieces. If he has to set cross-bars and timber above the ordinary, of course, as a general rule, he is compensated for that, but normal work of the miner at the face, tonnage work, includes the drilling of the hole, shooting the coal, furnishing explosives, until the last agreement, the furnishing of his tools, that was all included in the tonnage rate. This service the miner is required to do in that tonnage rate and in most of the districts, the temporary track that's laid at the face, the miner is required to lay that as part of his duties. That is all included in the tonnage rate.

Q. 21. And of course, all those things were taken into consideration by the contracting parties when they negotiated the amount of the rate?

A. That's right.

Q. 22. The same is true as to other piece workers in the mine, machine cutters, for instance?

A. That's right.

Q. 23. They also have duties to perform incidental to the operation of their machines and the cutting of coal?

A. That's right.

[fol. 468] Q. 24. And their rate of compensation is determined by an overall pay for everything that necessarily enters into the cutting of that coal?

A. The tonnage rates were predicated upon the services a man rendered at the face and that rate encompassed the duties provided for in the agreements as a service he would perform in producing that ton of coal. It's an outgrowth of conditions that have existed for years in the industry. There has always been disputes and arguments about these contracts and miners have entered into contracts and made them when they knew the terms accorded wasn't fair and reasonable but they were compelled to accept them under circumstances that they couldn't control.

Q. 25. But in working out the rates, both parties, both employers and employes, have taken into consideration all of the factors which their experience had taught them were included in the performance of the duties to be done by these particular men?

A. That's right. It's been one contract after another and these have been provisions which have been made and which we have carried out, and we believe in the fulfilment of our contract, carry it out whether it hurts us or whether it don't. A contract is a contract. We seek to remedy any defects in the contract at its expiration, from time to time, and that's been the process down through the years. There has been modifications and changes constantly in the industry, as a result of new conditions, increased use of machinery, increased knowledge of the dangers of mining, changes in ventilating methods, constant improvements [fol. 469] taking place, daily and yearly, and as these improvements come and advantages accrue, the miners have formulated their policies upon those changes and tried to secure a reasonable usage of those improvements. We have had in our contracts for many years this troublesome question of the advantages accruing from modernizing the industry and we have agreed basically that any advantages accruing by the introduction of modern machinery in mining, that both operators and miners participate in such labor saving and such advantages, and that has been followed throughout the years. While we have not agreed upon the division of the increased efficiency or increased productivity, as a general rule, that's been the policy of the Union.

Witness stands aside.

At this point, it being 1:00 o'clock P. M., a recess was taken until 2:00 o'clock P. M., at which time the trial of this case was resumed.

PERCY TETLOW, the witness heretofore introduced on behalf of the defendants, being recalled, testified as follows:

Cross-examination.

By Mr. Richardson:

Q. 26. Major Tetlow, you referred to certain hazards in the occupation of miners. That's a matter of which the Union has been cognizant all through its existence, has it not?

A. Right.

Q. 27. And has laid much emphasis upon the endeavor to minimize the Zazards?

[fol. 470] A. Correct.

Q. 28. The existence of these hazards has been taken into account in considering and arriving at the general scales of wages to be paid for inside workers, is that not so?

A. No, I wouldn't say that the hazards have been taken into consideration altogether. The hazards of mining, of course, has always been incident to the industry, but there has been a constant effort on the part of mining men to improve mining conditions and to eliminate some of the hazards that can be eliminated. There are hazards that can be definitely eliminated. There are other hazards that are unforeseen that I think will be with us always.

Q. 29. I mean, Major, there has never been any effort to obtain a stated factor of compensation on account of hazards as such?

A. Only in a general way. We have always contended that the hazards of mining and the loss of time incident to the hazards should be computed into the wages. We have always felt that miners, as in this present arrangement of this dead work week, only a small percentage of the men will be able to work six days. That is not true to the extent that an accident may occur to a man bodily, but to disruption and prevention of the work day, which the miner must meet. If, under a six day week, you get an average

of five days, and if it goes over five days, we will be fortunate indeed as an industry, because of the lost time that's bound to happen as a result of accidents in the mine which affects the property and not the body. So when you consider the lost time as a result of the hazards, we have [fol. 471] always felt that that should be considered in because the ultimate earnings, weekly or annually, should be considered in any wage consideration. That's been our position on that throughout the years.

Q. 30. And so you undertook to have the earnings or the rates of pay take into account these elements of hazard?

A. That's right, and also the ultimate earnings of the miner. There is many things in connection with mining that have been changed, or we meet a condition and try to deal with it intelligently, and with justice, and we are not able to remedy that for years. Ultimately, it will be changed and every one is glad of the change, but in these processes, it takes time to overcome the conditions. They can't be overcome in a year or a number of years. We strove for years to abolish the screened coal system in mining in this country as being unjust, and took the position the miner should be paid for all the merchantable coal he produced. It took us fifty years to accomplish that but it was finally accomplished, so, in these processes of collective bargaining and dealing in the employer-employe relationship, you might strive to bring about a condition that it might take you years to do it. Even though it is just and fair, it can't be accomplished and abolished until there is an understanding and realization of all sides as to the merits involved. Certainly hazards of mining should be considered and the dangers incident to it, because of the effect it may have upon the earnings of the men who work in the mines. We all know it is a hazardous industry. I have striven for years, I think it has been one of the goals I have sought from the beginning, more so than any other, [fol. 472] in legislative matters, I have endeavored to have state legislatures improve mining conditions, to reduce this tremendous loss of life, and most of it can be prevented. One of the things, of course, the industry has had to meet in the solution of these problems is the intensely competitive relationships that exist in the industry. There was a time, I remember, when we didn't know that coal dust was inflammable and would ignite and generate gases by heat, the transforming of dust by heat into gas that would in-

flame and destroy, we didn't know that, but we finally found that by adding moisture in the air currents, in certain seasons, and specially in the winter time, that we could reduce that hazard, and the same thing is true with the methods of ventilation and methods of mining, and I have been hoping throughout the years that some day in these United States that we would recover coal on a completely retreating system, and leave the worked-out places in the rear closed in by the stratas so coal dust and gases couldn't accumulate in old workings. We may reach that some day but we must strive constantly to reach these objectives and the credit goes to the mine management who are striving to solve these great problems. I remember when carbide was first introduced for lighting, the State Mine Inspectors of Ohio refused to allow it to be used, because they thought it was dangerous, and these things have been a matter of progress, development and study, and we have all been working in that direction, but when you come to compute these hazards, the industry and society should recognize the hazards of mining and adequate compensation should be provided to take care of these hazards which [fol. 473] destroy men's opportunity to earn and for families to subsist, and those are the goals for which we are all striving. It may take us a long time to do it, but in the end, that should be accomplished. I don't know if I am answering your question or not.

Q. 31. What you are saying, Major, is very interesting, and whether you answered my question or not, I do not have any quarrel with what you say. In considering the hours of work as well as the rates of pay, the hazards have been in the minds of the contracting parties, have they not?

A. Yes, hours of employment are a basic consideration because under normal conditions, we can produce more coal than the country can consume. The average working days only under extraordinary conditions exceed two hundred days a year. Today we are in the era of the greatest production of the world's history. We will approach six hundred million tons this year of bituminous production and the average work time under these extraordinary conditions will not reach two hundred and fifty work days, so, the work days and the reduction of hours underground ought to be reduced as productivity increases or as efficiency in combustion assists in the problem. These two processes

have been running hand in hand constantly, increased production through mechanization, lowered consumption through increased efficiency in combustion. It is estimated that in the last fifteen years our increased efficiency in combustion has decreased the need of two hundred million tons of coal annually, so these things compel us to look forward to shortening the work day underground in order that we will have sufficient work days in the year or a week rate that will permit us to live throughout the years.

[fol. 474] Q. 32. You recall, do you not, Major, that this was the Union's general attitude toward these matters as expressed by your President, Mr. Lewis, before the NRA when the matter was rather unexpectedly started in the summer of 1933?

A. Yes, sir.

Q. 33. And the brief of argument made by him, which appeared in your official Journal of the United Mine Workers?

A. I can't recall it now.

Q. 34. The burden of his presentation and argument, as you recall it, was, I believe, that this matter of hazards and the other intangibles should be taken into consideration in producing and yielding the rates of pay which were asserted by him to be reasonable and the short hours which were asserted by him to be proper?

A. I don't recall that.

Q. 35. What you have said about the hazards of mining is, of course, general and based upon Bureau of Mines records? I mean that it applies to all mines. You made no effort to single out this mine?

A. No, my testimony went to the general bituminous mining industry.

Q. 36. As a matter of fact, you have no familiarity with this particular mine?

A. No, only general knowledge of it, sir.

Q. 37. Have never been in it?

A. No, sir.

Q. 38. You have said something about the principal haz-

[fol. 475] ards resulting from the overhanging strata. That hazard is measured by the manner in which the overhanging strata may be dealt with, is that not so?

A. It is all dependent on how it is dealt with, more or less, because where you have in travelways and main haulage ways which are generally the main ventilating entries,

you have a greater pressure as a result of the ventilation in those main airways, and a good bit depends upon the moisture that may be in the air and its effect upon the stratas, and the constant movement of trips over the haulage ways and the jarring and shaking and the effect upon the roof. If these traveling ways are properly timbered, in the first instance, and they are getting more and more to the use of steel for use in timbering, for cross-pieces, steel I-beams, if they are properly timbered in the beginning, it will relieve many of the accidents and dangers that may occur later on. The main haulage and traveling ways are permanent. They are used possibly for the life of the mine. Other sections of it are worked out and abandoned, but these all remain as the main ventilating and haulage roads, so they must be kept up promptly and the timbering must be promptly done in these to take care of the life of the property and a good bit depends upon the management, the manner in which they perform their duties in making them safe. We have even had to complain about certain management and go to the Mining Department and insist upon the removal of certain mine management, because of their failure to apply these ordinary safe-guards.

Q. 39. Again you are speaking generally, and not in reference to this company?

[fol. 476] A. That's right.

Q. 40. If the travelways are properly timbered and properly supervised, and the timbering maintained as inspection may show is necessary, there is no reason why the haulways should be unduly dangerous, is there?

A. Oh, yes; oh, yes. The longer you use a haulway or travelway, and the coal is removed from each side of that travelway, and the greater length of that travelway, the greater the hazards because of the pressure of the overlying stratas upon the remaining supports which have been mined out on each side, and a great deal depends upon the pillar supports left to protect this main haulage, but always, constantly, day in and day out, these travel roads and haulage roads must be inspected and must be protected because of this constant change in the pressure and in the condition of the travelways. You have got to remember that these haulage roads and travel roads which remain for years under the constant pressure and the removal of the coals on each side of them, makes it necessary that constant supervision of their safety is always there, and

that's one reason why we have so many accidents on these travel roads and haulage roads. You don't get as many accidents in the deveioping entries as the result of falls of rock as you do in the haul roads, which are left there for months and years, and they are the dangerous roads, they are the dangerous sections of the mine when you come to consider travel and haulage.

Q. 41. If it appears that in this particular mine there have been no accidents or injuries along the travel ways on account of overhanging strata, wouldn't that indicate [fol. 477] to you that proper inspections and supervision and care have been exercised so as to have a minimum of hazard in that regard?

A. That's correct.—That's correct, and it may be, too, it may be due to the physical condition of the stratas. You may have stratas of sand rock that won't break, the pressure will come down constantly on it and the sand-rock won't break. You take limestone and other types of stratas will break and I have seen travel ways that stood for fifty years and never broke. It all depends upon the type of stratas and upon the pressure that may be exerted in that open space where that coal is taken out, and you may have in the mine, you may have a fine situation and condition as the mine develops, and reach a section where the roof will be dangerous and bad and break and be just the opposite to what it was. Those are things that happen in mining. They don't always remain constant and the same in a mine. You may have two places side by side and one place, you have to use twice as much timber as you would in the other to keep the place safe. That's a natural situation in mining..

Q. 42. I don't want to interrupt you. Indicate to me in some way when you have finished your answer.—You have referred to hazards inside commencing when the miner enters the mine. There are hazards outside, are there not?

A. There are hazards outside of the mine, of course, but there is greater hazard inside.

Q. 43. And the miner or employe about the premises where the industrial operations are in progress is subject, of course, to such hazards as may be so long as he is on the premises?

A. Yes, sir, that's right.

[fol. 478] Q. 44. You have referred to your travels in

Europe and studies of conditions over there. At what time did you make those studies, Major?

A. The last time was in 1926.

Q. 45. You found many conditions in the mining industry there different from conditions obtaining in our country, I dare say?

A. Yes.

Q. 46. As a general proposition, the wages which are paid to the inside workers in European and British mines are very greatly under the wages of our men over here?

A. They are.

Q. 47. And by the same token, the per man production over here is considerably higher, isn't it?

A. That's right.

Q. 48. Another testimonial to the worth of our American men.

A. Yes, I think it is well known, we all know what that rate of production is. Our productivity is, on a whole, about four times greater than that of Continental Europe and Great Britain.

By the Court:

Q. 49. Do you mean in aggregate volume or per man?

A. Per man per day. There is mines in Belgium where the production per man is less than a ton. In fact, the average of Belgium is less than a ton. Germany and England had the highest rates of production and the highest rates in all those countries has been approximately two tons per man.

[fol. 479] Redirect examination.

By Col. Harris:

Q. 1. Major Tetlow, Mr. Richardson asked you about all of the duties that the miner performs being taken into account in the fixing of the wage scale. Am I correct that you answered that all the duties he performed at the face were taken into account?

A. All the duties he performs at the face?

Q. 2. Yes, at his regular working place.

A. That's right.

Q. 3. Was travel time taken into account? In other words, has travel time been paid for in America?

A. No, it hasn't.

Q. 4. He asked you about hazards. Does the pay in Mine A for the same type of work in the same district continue on the same scale for that work in Mine B even though one mine is very hazardous and the other is far safer and less hazardous?

A. The rates would be the same in Mine A and Mine B.

Q. 5. Now, one question, if the Court pleases, that is not in re-direct, I forgot to ask it this morning. We have been talking about competitive conditions and I am curious about the kind and quality of coal that's involved in this field here. It is poor quality, high quality, low price or high price?

A. It's a low volatile coal.

Q. 6. What do you mean by low volatile coal?

A. It's low in volatiles and it's pratically smokeless coal. It's a high-grade, high quality, by-product coal. These are the finest, best coals we have in the United States in this [fol. 480] low volatile area. I am not talking about these particular mines. I am talking about the Pocahontas-Tug River Area. The quality is such that it bears a higher price in the market, the demand for the coal is so great, and it is increasing, for this kind and type of by-product coal, that it enjoys a marketing condition that isn't surpassed by any other coals produced in these United States.

Recross-examination.

By Mr. Richardson:

Q. 1. Major, you mean that travel time has not been paid for as such, don't you?

A. We contend it has never been paid for. We have been arguing and demanding it for years as a reasonable, just consideration but we have never been able to get the producers to agree to it. It is like all the other questions in the past that have been settled. You may have just consideration due, but you can't obtain them. We have never obtained travel time pay because we couldn't get the employers to pay it. We have been contending for years and years and I know that the only reason why it hasn't been paid is because the employers wouldn't agree to it, and we have contended, as I said, for over twenty years and argued for this bank to bank arrangement as a just claim, and the employers have denied it. There is

many of them, of course, I think, that recognized the claim as being just and would like to compensate for it, but due to the fact that the general trend in the operating groups is to object,—and may I say in that connection, in my entire life I have never known a just consideration that's been submitted that has been accepted in the first instance [fol. 481] by the producers in any wage negotiation I have ever attended, and I have attended the most of them.

Q. 2. You said a while ago that what you wanted and have striven for in respect to wages was a compensation that covered the elements that enter into the employment, particularly with reference to the hazards.

A. That's right.

Q. 3. And that is another of the elements in your mind when you are negotiating a scale of wages?

A. That's true, and we considered that travel time was a hazard and was work time, and that we should be compensated for it and we never could get the employer to agree to it in collective bargaining agreements.

Q. 4. It was entirely feasible, was it not, to measure the working day on a face to face basis and include in that measure enough to take care of the travel time?

A. No, I don't think that would settle the question.

Q. 5. I say that could be done. Assuming you thought a man ought to have one dollar a day or two dollars a day for travel time, you could agree that his rate would be ten dollars a day at the face and include that one dollar or two dollars for the travel time, couldn't you?

A. No, I couldn't.

Q. 6. It is a little difficult for me to understand why it couldn't be done. It is understandable that you might not agree on the amount, but why couldn't it be done?

A. If the consideration is travel time, and that's to be compensated for, travel time, then you should be compen- [fol. 482] sated for travel time.

Q. 7. Then is it your idea that the Union has always contended and now contends that it should be paid, each man for the precise number of minutes of travel time which he employs in his occupation?

A. If you would follow it to its logical conclusion, that's correct, but we have said time after time we was willing to take an average of a mine or willing to take an average of an area in order to place every one on an equal basis.

We have endeavored every way we could to secure knowledge of travel time in the industry. We proposed to the operators in New York and also in Washington this year, and we agreed with the Secretary of the Interior when he requested both sides to make a survey to determine the actual travel time, so that that would not be a moot question. We agreed to it and the operators suggested,—in fact, they have objected to any trend towards securing accurate information. That's all for preventing the accomplishment of knowledge. When you sum all this question up, this whole controversy, the miners have been contending for it, the operators have been rejecting it, and we have not been able to agree. We have been contending for it year after year. The operators say no. We say yes. We can't agree, as we have been doing, and until there is a realization of the justice in the claim, it will not be settled unless some one other than the operators brings about a settlement.

Q. 8. You say you have been contending for it consistently?

A. Right, sir.

[fol. 483] Q. 9. Show me a single demand that the Union has made within the twenty year period next prior to 1943, in which you ask for payment for travel time as such?

A. Our demands have been in every joint conference in the last twenty years. The question of the bank to bank method of computing time has been a standard demand of ours.

Q. 10. Will you be good enough to pick out your demands presented at the successive wage conferences and show me that demand which argues for the thing you now assert?

A. I haven't got the record of these joint conferences here.

Q. 11. I will go so far as to request that after you retire from the stand, you go back over your records, and if there is in any wage conference within the twenty years next prior to March, 1943, a demand made by the Union for the payment of travel time as such, that you supply a copy of that to the reporter.

A. Our demands have never been any other than computing time underground from portal to portal. The question has been based solely upon that issue. From bank to bank, and in the last conference, from portal to portal. The description of "portal to portal" was made in the last joint

conference for the first time. Prior to that time, it was from "bank to bank," but we understood bank to bank was portal to portal, the entrance of the mine, and our demands began away back, as I told you, over twenty years ago, and in every convention of the miners, it's been an issue, it's in their basic law, their Constitution. It's an issue that has never been lost sight of.

Q. 12. Was it presented to the NRA in 1933?

[fol. 484] A. As pay for travel time?

Q. 13. As such?

A. As such,—it was never submitted in that language and in that term. It's been a bank to bank or portal to portal demand.

Q. 14. It was in contemplation of the parties as a means to accomplish other purposes but was not asserted as such, isn't that so?

A. It was a demand for portal to portal and bank to bank payment. That was the basis of the bank to bank proposal and it has never been changed, but you are correct sir, when you ask whether or not we have submitted a proposal for travel time as such. We never did. Our position was payment from portal to portal on the basis of total time underground, which, naturally, would include travel.

Witness stands aside.

W. S. White, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. W. S. White, I believe?

A. Yes, sir.

Q. 2. Mr. White, where do you live?

A. I live at Jewell Ridge, Virginia.

Q. 3. You are employed by what company?

A. Jewell Ridge Coal Corporation.

Q. 4. How long have you been so employed?

[fol. 485] A. This coming January will be three years.

Q. 5. I believe you are what is known as a coal loader?

A. Yes, sir.

Q. 6. Commonly called a coal miner, the general term is coal miner, is it?

A. Yes, sir.

Q. 7. Mr. White, how long have you been connected with the coal business or been a miner?

A. Well, for about eleven years, off and on.

Q. 8. How old are you now?

A. I am thirty-six.

Q. 9. You have been working since 1940 for the Jewell Ridge Coal Corporation?

A. Yes, sir.

Q. 10. At which one of its mines?

A. Mine No. 1.

Q. 11. That's the one we call Jewell Ridge, I believe?

A. Yes, sir.

Q. 12. Mr. White, starting off with your day's work in the morning, at what time do you arrive at the lamp house?

A. Well, between, right around between six-thirty and six-fifteen.

Q. 13. At what time do you go into the mines?

A. At seven o'clock.

Q. 14. When you arrive at the lamp house, what is the first thing you do?

A. Well, I come down to the lamp house and if there is a line of men there, I get in line with the rest of them and get [fol. 486] my light and if I have any tools in the shop, I go around behind the lamp house and get my tools at the shop.

Q. 15. In order to get your lamp, do you have to surrender a check?

A. Yes, sir, we have a little check with a number on it.

Q. 16. Does the same number appear on the check as is on the lamp?

A. It does if my lamp is not out of order.

Q. 17. Generally speaking, the same number is on the lamp as on the check?

A. Yes, sir.

Q. 18. After that, you do what?

A. After getting the lamp, I always go around behind the lamp house to the shop, and if I have any tools there, I get them and take them up to where the man-trip stops.

Q. 19. Name the tools that you, as a coal miner or coal loader, use?

A. We have a pick and shovel and augur and breast-

plate and tamping-bar and two wedges, an ax or saw, either one, battery and a cable and a file.

Q. 20. So if you have any of those tools in the blacksmith shop, you go get them?

A. Yes, sir.

Q. 21. For what purpose do you bring your tools to the blacksmith shop?

A. To have them sharpened or a handle put in a pick or augur sharpened or pick sharpened.

[fol. 487] Q. 22. About how often during the week would you have to bring out one or more tools to the blacksmith shop?

A. That all depends on how it is fixed. If it is fixed pretty good, maybe once a week you will bring out a pick to be sharpened or happen to break a handle,—maybe four or five times a month you will be bringing something out.

Q. 23. You say if you have any tools in the shop, you take them where?

A. Up to where the man-trip stops to pick up the men.

Q. 24. How is this man-trip made up?

A. It was made up from one long tram, the one I rode, and I believe there was three sections of men rode this tram, and when they would get to where one section of them was going, they would cut off the cars, cut it off at the tool car, this trip that was going to the other section, and take the tram on, and when they got to another place, they would cut off again.

Q. 25. In other words, the cars going to a particular section would be cut off when it arrived at a proper place to go down to that section?

A. Yes, sir.

Q. 26. Was it customary for the men going to the same section to ride in the same cars going to that section?

A. Yes, sir.

Q. 27. What kind of cars did you ride in?

A. Ordinary steel mine cars.

Q. 28. Are they the same cars used for hauling coal?

A. They were.

Q. 29. In what condition did you find those cars?

[fol. 488] A. I found some in pretty good condition and some in pretty bad condition.

Q. 30. Suppose it rained?

A. You will find water in the cars.

By Mr. Stuart: May we have the understanding, if Your — please, that testimony along the line of discomfost is objected to as immaterial.

By the Court: Very well. I imagine a good deal of this testimony will be repetition, about matters as to which there is no conflict and I am not going to stop you unless it becomes too extensive, but bear in mind that the same cars which haul the coal are used for the man-trip and let's confine ourselves as much as possible. I am not going to unreasonably limit you but as to matters about which there is no controversy, let's have a minimum of testimony.

Q. 31. Suppose it should snow during the night, from one inch on up to six inches, or any other depth, in what condition would you find the car in the morning?

A. In the time I have been there, I have found as high as six inches of snow in the cars.

Q. 32. Was any effort made to put the car in any condition for the men to ride in, for the comfort of the men?

A. No, sir.

Q. 33. Were the cars brought to you in the same condition as the weather made them during the night?

A. Yes, sir.

Q. 34. Where do the men sit in those cars?

A. They sit up on this little bench, what they call the "mourner's bench."

Q. 35. That's a little raise on each side?

A. Yes, sir.

[fol. 489] Q. 36. In the middle is a depressed sunken place?

A. Yes, sir.

Q. 37. Is there any space for the men to sit on to protect themselves from the condition of the car?

A. No, sir.

Q. 38. Is it customary for the men to get a cardboard or something to protect themselves?

A. Yes, sir, generally. Most of them carries a piece of sack or something in his pocket.

Q. 39. Who is in charge of the man-trip?

A. The section foreman.

Q. 40. Where does he ride, usually?

A. He generally rides next to the tool car.

Q. 41. Does he ride in one of the cars going to his section?

A. Yes, sir, generally.

Q. 42. In which his men are located?

A. Yes, sir.

Q. 43. Who gives the orders for the man-trip to move in?

A. Well, generally, Mr. Hagy or the mine foreman one will be standing there and tell him to go ahead.

Q. 44. Does your section foreman in the cars going to his section, does he exercise any supervision or control over the men, and if so, to what extent?

A. Well, if you get too many men in the car, he will tell you to scatter out and not too many men in a car, and if you get on the wrong side of the car where the wire is at, he will tell you to move over.

Q. 45. What are the rules of the company as to the number [fol. 490] of men riding in a car on a man-trip?

A. I think seven men to the car.

Q. 46. Suppose eight or more men get in a car, does the section foreman give any orders as to what the eighth should do?

A. Yes, sir, they would tell them not to crowd the cars, and to get in another car.

Q. 47. How are these man-trips propelled?

A. They are pulled by an electric motor.

Q. 48. Does it have a trolley like a street car?

A. Yes, sir.

Q. 49. Has a trolley wire, also, I take it?

A. Yes, sir.

Q. 50. Is that trolley in the center or over to one side?

A. Over to one side.

Q. 51. Are the men required to sit opposite the trolley wire?

A. They are.

Q. 52. As you go down in the mine on your man-trip, how do the men sit? Are they able to sit up erect or required to bend over by reason of the closeness of the roof?

A. Well, in some places you can sit up erect and other places you are sitting bent over.

Q. 53. What section do you work in?

A. Straight First North.

Q. 54. As best you can estimate it, how far is that from the portal?

A. I would say about four miles and a half.

Q. 55. After you leave the main passage way, entrance way, and branch off to go down to your particular section,

[fol. 491] are you able to sit up in your cars or do you have to lean over?

A. No, sir, it's very low.

Q. 56. Indicate if you can in your chair there about to what extent you have to lean over?

A. You have to get over pretty low, something like that. (Demonstrating).

Q. 57. How far do you travel in that position to get to your man-station, approximately?

A. I would say about six or seven thousand feet, something like that.

Q. 58. Is that a comfortable position?

A. No, sir.

Q. 59. What would happen if you sat up straight?

A. You can't sit up straight.

Q. 60. Why not?

A. For the roof.

Q. 61. The closeness of the roof over your head?

A. Yes, sir.

Q. 62. At what point in your section do you get out?

A. Get out at the man-station.

Q. 63. Does each section have its man-station, generally speaking?

A. Yes, sir.

Q. 64. What is a man-station, your station, for instance?

A. It's a little old breakthrough there where we all gather up to, got a powder house there and the man-trip leaves from there and we call it a man-station.

[fol. 492] Q. 65. The man-trip on your section is where you catch the man-trip coming out or get off, going in?

A. Yes, sir.

Q. 66. And that's either at or close to the powder magazine inside the mine?

A. Yes, sir.

Q. 67. What do you do at the man-station?

A. If we have any tools, we take them out of the car, and lay them down and set our dinner buckets down and check in,—we have a little check that we hang up on the board.

Q. 68. Is that like the lamp check?

A. No, the check we put on our cars is made different. It has a number on it and is practically the same as this.

Q. 69. Do they all have the same number?

A. Yes, sir. And the section boss will open the powder house and call our numbers and we get our powder and get our bucket, and if we have any tools, get our tools, and walk from there to the work place.

Q. 70. You mean your dinner bucket?

A. Yes, sir.

Q. 71. Do you also carry your water into the mine in that same bucket?

A. Yes, sir.

Q. 72. In what form does the powder come?

A. Comes in little sticks about eight inches long.

Q. 73. Do you also get some detonators or explosives at the powder magazine?

A. Yes, sir.

[fol. 493] Q. 74. Do you have a separate box in which you carry these detonators?

A. Yes, sir.

Q. 75. That is attached or is a part of your powder bag?

A. No, we put it down in the powder bag, this box.

Q. 76. How do you get from the man-station to your working place at the face of the coal?

A. We walk.

Q. 77. In your section, about how far did you walk?

A. About nine hundred and fifty feet, I guess, something like that.

Q. 78. Carrying your dinner bucket?

A. Yes, sir.

Q. 79. Any tools you may have.

A. Yes, sir.

Q. 80. Your powder and detonators?

A. Yes, sir.

Q. 81. You told me how far you walked before but I missed it. How far do you walk?

A. About nine hundred and fifty feet.

Q. 82. Does that take you up to your room where you are actually loading coal?

A. Yes, sir.

Q. 83. In walking that distance of nine hundred and fifty feet, are you able to walk standing up erect?

A. No, sir.

Q. 84. How do you walk?

A. Walk all bent over.

[fol. 494] Q. 85. Would you mind demonstrating how you walk?

A. (Getting out of witness chair and demonstrating): Walk something like this.

Q. 86. Is that a fair illustration of how you walk?

A. Yes, sir.

Q. 87. When you get to your room,—and that's where you load coal?

A. Yes, sir.

Q. 88. Do you work in that same position?

A. Yes, sir, we have to work in the same position.

Q. 89. The room you work in on your section that you are working on, what's the approximate height of the coal or thickness of the seam?

A. About four feet, maybe it runs a little more or little less.

Q. 90. About forty-eight inches?

A. Yes, sir.

Q. 91. In working and loading that coal do you have to stay down within that forty-eight inches?

A. Yes, sir.

Q. 92. Now, I believe you work by the ton?

A. Yes, sir.

Q. 93. You get paid so much a ton?

A. Yes, sir.

Q. 94. At what time are you required to be at your working place ready to load coal?

A. At eight o'clock.

Q. 95. In the morning?

[fol. 495] A. Yes, sir.

Q. 96. Is it true you are paid based on the quantity of coal you load during the day.

A. Yes, sir.

Q. 97. In the process of your work, are you required to shoot the coal?

A. Yes, sir.

Q. 98. How is that done?

A. You have an augur that's about nine feet long or ten, something like that, and you bore these holes with these augurs.

Q. 99. By hand power?

A. Yes, sir.

Q. 100. How long does it take you to bore one hole?

A. If you work right hard, you might bore one in ten minutes.

Q. 101. Can you bore one in a minute or two?

A. Oh, no.

Q. 102. You have been boring these holes for several years?

A. Yes, sir.

Q. 103. How many holes do you have to bore, more than one?

A. If you are working in a room, you bore three holes.

Q. 104. After you get them bored, what do you do?

A. You tamp the powder in them.

Q. 105. Put the powder in it first?

A. Yes, sir.

Q. 106. And tamp it?

A. Yes, sir.

[fol. 496] Q. 107. Do you shoot all three holes at the same time?

A. No, sir, one at a time.

Q. 108. Do you generally shoot one hole and load or shoot one hole and then another before you start to load?

A. That all depends. Generally, we shoot all three while we are shooting.

Q. 109. What is the process of exploding that powder?

A. We have a cable, these detonators have a wire about ten feet long, two wires, and we fasten our detonators to these two wires and go back down the breakthrough and apply the battery to the detonator and that puts off the shot.

Q. 110. When that goes off, is any coal dust suspended in the air?

A. Yes, sir.

Q. 111. Is it thick?

A. Yes; sir, coal dust and smoke together.

Q. 112. Then I take it you work there the rest of the day?

A. Yes, sir.

Q. 113. Taking off thirty minutes for lunch?

A. A coal loader very seldom has any certain time to eat. He will eat between trips, get a car or two cars, and load them and eat while we are waiting on another car.

Q. 114. Eat when you won't lose any work time?

A. Yes, sir.

Q. 115. It may be morning or afternoon?

A. Yes, sir.

Q. 116. What time do you quit work?

A. Quit work at three-thirty.

Q. 117. When you quit work, where do you go?

[fol. 497] A. Back to the man-station.

Q. 118. What do you do there?

A. Get our tools together and pile them up. We did have to lock them up when they was double-shifting, but now we pile them up.

Q. 119. In a convenient place in the room where you are working?

A. Yes, sir.

Q. 120. Where you can get them the next day?

A. Yes, sir.

Q. 121. Suppose you had tools that needed repair?

A. We take them out.

Q. 122. Do you walk the nine hundred feet back to the man station?

A. Yes, sir.

Q. 123. Then what do you do when you get back there?

A. Our section boss is generally there, and he asks us how many cars we loaded and asks us if we want any powder, if so, how much, and he puts it down.

Q. 124. You mean he asks how much powder you will need for the next day?

A. Yes, sir.

Q. 125. Suppose you say "I want three sticks tomorrow" and turn in your bag that's empty, who puts them in?

A. They have the powder men that comes around at night.

Q. 126. So when you get your bag back the next day, it will have the number of sticks and detonators you have ordered the evening before?

[fol. 498] A. Yes, sir.

Q. 127. You wait there for the man-trip?

A. Yes, sir.

Q. 128. When the man-trip comes, you get in, I take it, along with the other men in your section?

A. Yes, sir.

Q. 129. And are carried out by the same kind of motor that brought you in?

A. Well, no, sir, not at that time. This motor would take us up to where the tram comes down.

Q. 130. Up to the main line?

A. Yes, sir, and we are set off there and set there in those cars until the tram comes along and picks us up.

Q. 131. In other words, you reverse the process of going in?

A. Yes, sir.

Q. 132. The main tram comes along and moves to another section and picks up some more men?

A. Yes, sir.

Q. 133. Until you finally get back out. I believe you said you started in the mine at approximately seven o'clock?

A. That's right.

Q. 134. At that time, how many man-trips went into No. 1 mine,—more than one or was it two?

A. Three, I believe.

Q. 135. On an average, about what time did you get out of the mine in the afternoon?

A. It would vary from four-thirty to five o'clock.

Q. 136. Go in at approximately seven or a little after and [fol. 499] get out from four-thirty to five?

A. Yes, sir. Generally around four-thirty.

Q. 137. You were paid for the actual coal loaded at the face of the mine?

A. That's right.

Q. 138. Suppose you had some tools with you, what would you do with them when you came out?

A. I would take the tools down to the blacksmith shop and tie my check to it and leave it there for the man to fix that evening.

Q. 139. Which would be the tools you would pick up the next morning?

A. Yes, sir.

Q. 140. Now, that is the section of the mine you work in, are you bothered with bad odors?

A. Yes, sir, very much.

Q. 141. What is the customary sanitation opportunities in a mine?

A. We don't have any.

Q. 142. The men just use the worked out places?

A. Yes, sir, just any place they can get. They can't go in a worked out place, because when a place is completed, it falls in. Sometimes, before it is completed, it falls in.

Q. 143. You mean when the pillars are completed?

A. Yes, sir.

Q. 144. Until the pillars are completed, is it considered to be a worked out place?

A. Yes, sir.

[fol. 500] Q. 145. Is it obnoxious?

A. Yes, sir, pretty bad. I pull what they call the chain pillars and where these other men go out, I have to pull these pillars back.

Q. 146. Are you bothered with gnats in the mine?

A. Yes, sir, we have plenty of them.

Q. 147. Do you just have a few of them or would you say a great number of them?

A. There is a great number of them.

Q. 148. During what season of the year do you have gnats?

A. Have gnats all the time.

Q. 149. Forever with you?

A. Yes, sir.

Q. 150. Are they any worse one season than the other?

A. No, sir, I haven't missed any of them.

Q. 151. When you eat your lunch, do those gnats cause you any bother?

A. Oh, yes.

Q. 152. Disturb you when you are eating your lunch?

A. Yes, sir, you have to keep them knocked off; they will gather about your light.

Q. 153. You keep your lamp on all the time?

A. Yes, sir.

Q. 154. And these lamps attract the gnats?

A. Yes, sir.

Q. 155. How about your food; does it attract gnats, too?

A. Yes, sir.

Q. 156. Do you know where these gnats breed?

[fol. 501] By the Court: That's getting pretty far afield, when we go to breeding gnats.

Q. 157. The gnats are present, are they not?

A. Yes, sir.

Q. 158. Is there any danger atached to this man-trip?

A. Oh, yes, sir.

Q. 159. In what way, Mr. White?

A. Well, there is danger in rocks.

Q. 160. Have you ever been on a man-trip when it wrecked?

A. Yes, sir.

Q. 161. More than once?

A. Yes, sir.

Q. 162. Have you ever been hurt on a man trip?

A. No, sir.

Q. 163. Do you know of any other men who have been hurt on man-trips?

A. There have been a few hurt there, claimed they was hurt on a man-trip.

Q. 164. Can you name some of them?

A. A fellow named Red McHone, I believe, he hurt his back, and a fellow named Carner Fox, he hurt his ribs, couldn't get the car stopped.

Q. 165. Do you know of any others that have been hurt on man-trips?

A. None that I have heard of. I haven't seen any.

Q. 166. Have you heard of any others?

A. Yes, sir.

Q. 167. Name some of the others?

[fol. 502] A. I'm sorry, I don't believe I can recall their names.

Q. 168. Do you know the occasion so as to describe it?

A. No, sir.

Q. 169. In walking from your man-station to your work room, do you have to watch out for that trolley wire that you spoke of?

A. Yes, sir, some times.

Q. 170. Do you have a trolley wire most of the way?

A. We have a trolley wire most of the way but we walk on the other side, the opposite side of the track from the wire.

Q. 171. Do you know whether the voltage in that trolley wire is sufficient to hurt you if you come in contact with it?

A. Yes, sir, there has been a few killed that way.

Q. 172. Will it knock you down?

A. Yes, sir.

Q. 173. Have you ever come in contact with it?

A. Yes, sir, I have been in contact with it.

Q. 174. What will it do to you?

A. It's something a fellow can hardly explain. Of course, it didn't knock me down.

Q. 175. But it is not a comfortable feeling?

A. No, sir.

Q. 176. What kind of light do you have in the mine? How is it lighted?

A. Electric lights, by battery.

Q. 177. You mean that's the one that you carry on your head?

A. Yes, sir.

Q. 178. How about the electric system of the mine?

A. They have lights along the main line probably every one or two hundred feet, something like that.

Q. 179. Do those lights go up to the room where you work?

[fol. 503] A. No, sir.

Q. 180. How far away from your room do they stop?

A. They stop about nine thousand feet or something like that.

Q. 181. Do you mean nine thousand or nine hundred?

A. About nine thousand.

Q. 182. And in that nine thousand feet, the only light you have is the one on your cap?

A. Yes, sir.

Q. 183. I asked you about the injuries on the main man-trip. Do you know of any one injured while walking from the man-trips to the working rooms?

A. No, sir, I don't know of any one.

Q. 184. Going back and forth?

A. No, sir.

Q. 185. State whether or not the section foremen, while on these man-trips, gives any direction to his men as to what they shall do during the day?

A. Oh, yes, sir. He will tell you, if you have worked out of a place, and you don't have any certain place to work in, and he will tell you to go work with such and such a fellow.

Q. 186. Do I understand that he does give directions on these trips?

A. Yes, sir.

Q. 187. Has he given you directions on it?

A. Yes, sir.

Q. 188. On your way out, when you finish your day's work, does the section foreman give directions at times as to what shall be done the next day?

A. Yes, sir, some times.

[fol. 504] Q. 189. When you reach your room where you are going to work, are you able to go to work immediately loading coal?

A. No, sir. It takes a good two hours to get ready to start loading coal.

Q. 190. What do you do during that time?

A. Well, we have to move these machine cuttings.

Q. 191. Is that the bug-dust they talk about?

A. Yes, sir.

Q. 192. How is that removed?

A. With a long-handle shovel about ten feet long, out from under the cut; take it out with that shovel and throw it away with another.

Q. 193. Is that bug dust sent on the outside?

A. No, sir, it is piled up in there.

Q. 194. After you get the bug dust removed, what do you do?

A. When we get the bug dust removed, we bore our holes or set what we call safety pieces.

Q. 195. What are safety pieces?

A. Two pieces we set generally on each side of the car for protection.

Q. 196. Do you have to set pieces up where the machine was cutting?

A. On pillars you are constantly timbering in any spare time you have.

Q. 197. How about sounding the roof?

A. Oh, yes, that's the first thing a man does when he goes in his place.

Q. 198. Is that a constant process during the day?

[fol. 505] A. Yes, sir.

Q. 199. Do you work part time on your knees?

A. Yes, sir, I do.

Q. 200. In going to your working place, do you have to go on your knees any of the time?

A. No, sir, a man don't have to get down on his knees. He can walk very well.

Q. 201. Is there any difference in your knees by reason of you working on your knees?

A. Yes, sir.

Q. 202. Do you mind showing them to us?

A. (Displaying his knees): That one beeled.

Q. 203. How about the other one?

A. The other one is normal.

Q. 204. Is that condition unusual in miners?

A. No, sir. Your Honor, I have a correction to make in my statement. Instead of, Senator asked me what was the last light. It's nine hundred feet instead of nine thousand.

Cross-examination.

By Mr. Stuart:

Q. 1. Mr. White, you said you are paid on a tonnage basis. How many tons, on an average, do you load a day?

A. It will average about twelve tons a day, something like that. It will run higher one day and lower the next.

Q. 2. In addition to what you are paid for loading the coal, you are also paid yardage for the rock that comes, I believe?

A. Yes, sir.

[fol. 506] Q. 3. Now, going to your trip in on the man-trip, you spoke of having found six inches of snow in a car. You don't mean that is something that happens often, do you?

A. Well, no, sir, you wouldn't find six inches of snow in them often but every time it snows, we have snow in the cars.

Q. 4. The car that you rode in has always been sitting outside in the weather just before you rode in, has it?

A. Yes, sir.

Q. 5. Except on one night in the week, aren't the cars usually used in the night shift?

A. Yes, sir, they are usually used in the night shift, but when they get through with them at the tipple, they leave them setting on the main line and they take what weather may come.

Q. 6. That's not very long, is it?

A. I don't know what time they come out.

Q. 7. You don't mean that you sit down in that six inches of snow when you find it there?

A. No, sir, I generally carry something in my pocket to ride on. If I didn't I would have to sit in it.

Q. 8. You wouldn't think about scraping it off before you sat down?

A. You could take your foot and scrape it off, but still it's in the car.

Q. 9. Does the foreman ride in the same sort of car the rest of you do?

A. Yes, sir.

Q. 10. You spoke of the supervision which you had on the man-trip. You said if one of you got in the wrong car, the foreman would probably call your attention to that?

[fol. 507] A. Yes, sir.

Q. 11. And if one of you sat down on the side next to the trolley wire, your attention would probably be called to that?

A. Yes, sir.

Q. 12. And that if so many of you got in one car as to crowd it, the foreman would probably say something about that?

A. Yes, sir.

Q. 13. You know the Federal Bureau of Mines makes inspections of the mines, don't you? Federal men come there, you know?

A. Yes, sir, I have seen them there one time, I believe.

Q. 14. Did you know that the Federal Inspection Standards that the Federal Bureau of Mines provides contains this in Rule 60: When riding in a car on a trolly-haulage road, men should ride on the side of the car opposite the trolley wire, if there is any danger of men coming in contact with the wire?

A. I knowed it was a rule; I knowed it was the law.

Q. 15. There are some other things the foreman looks out for when you are riding those man-trips, too,—they never allow the men to ride on the rear bumper or between the cars, do they.

A. No, sir.

Q. 16. You know there is a Federal regulation on that which reads: No person other than the brakeman should be permitted to ride on the rear bumper of a man-trip and no person should be allowed to ride between cars?

A. That's right.

Q. 17. Then, if men start getting off the trip before it stops, the foreman is apt to tell them not to do that?

A. Yes, sir.

[fol. 508] Q. 18. Rule 62: The man trip should come to a full stop before men load and unload?

A. Yes, sir, I knew it was against the law.

Q. 19. Then there is another item which you didn't mention in your testimony, and that's about the car the tools are hauled in. No men are allowed to ride in that car?

A. No, sir.

Q. 20. And Federal Rule No. 64 says this on that: No material except tools and other supplies that can fit inside a separate car should be hauled on man-trips?

A. I never did read the Federal Rules, but I knew it was the law.

Q. 21. And on that same subject, Rule 65 says: A car shall be provided for tools and tools should not be permitted in any man-trip in the cars with the men?
A. Yes, sir.

Redirect examination.

By Senator Muse:

Q. 1. The section foreman, if you v-olate one of the rules of the Company on this man-trip does he at the time give you a discipline slip?
A. I have heard of it, but he has never given me one.
Q. 2. Do you know that he does do that?
A. Yes, sir.

Witness stands aside.

[fol. 509] H. D. Hampton, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. H. D. Hampton?
A. Yes, sir.
Q. 2. You are employed by the Jewell Ridge Coal Corporation?
A. Yes, sir.
Q. 3. Are you an officer in the Union?
A. Yes, sir.
Q. 4. What is your position?
A. President of my Local Union.
Q. 5. What's that Local Number?
A. Sixty-one sixty-seven.
Q. 6. Are you also one of the names defendants?
A. Yes, sir.
Q. 7. How long have you been working at Jewell Ridge?
A. I went to work at Jewel Ridge in 1921.
Q. 8. What as,—as a coal loader?
A. Yes, sir.
Q. 9. Are you now a coal loader?
A. Yes, sir.

Q. 10. How long have you been working around mines?

A. About twenty-eight years.

Q. 11. How old are you?

A. Forty-seven.

Q. 12. In what section do you work in Jewell Ridge?

A. First North Straight.

[fol. 510] Q. 13. That's approximately how far from the portal?

A. About four and a half miles, in my judgment.

Q. 14. Were you in the court room when Mr. W. S. White testified?

A. Yes, sir.

Q. 15. Did you hear his evidence?

A. Yes, sir.

Q. 16. Do you know Mr. White?

A. Yes, sir.

Q. 17. Is your routine as a coal loader similar to that of Mr. White's?

A. Yes, sir, practically the same, except he works in pillars and I work in a room.

Q. 18. With that exception is your experience as a coal loader the same as he has testified to?

A. Yes, sir.

Q. 19. You also ride the man-trips?

A. Yes, sir.

Q. 20. Are those man-trips dangerous or not, Mr. Hampton?

A. Yes, sir, I consider them dangerous.

Q. 21. Have you ever been hurt on one?

A. No, sir.

Q. 22. Do you know of any men who have been hurt on man-trips at this mine?

A. Yes, sir.

Q. 23. Will you name some of them.

A. I have the names of four I call to memory very easy. I have one here—two men—my two first men, that was [fol. 511] killed on a short man-trip. This first one was a foreigner, I remember his name as Dominic,—I am sure Mr. St. Clair remembers him, and Tim Yegan,—to the best of my knowledge, he was a brakeman. Those two were killed, and he mentioned Corner Fox.

Q. 24. You mean Mr. White did?

A. Yes, sir, and George Whitt. We were going in one morning and the car wrecked and some way he got one of his fingers, I disremember which one it was, but I believe it was this finger, mashed very bad. I think he lost from three to four weeks with that finger, and Red McHone, as Mr. White quoted him, he didn't lose any time, but he got jarred up pretty bad.

Q. 25. What kind of wreck was he in?

A. In the man-trip when a car wrecked and Mr. Fox lost a day after he went in there. He felt like he wasn't able to work and went back home.

Q. 26. How was he hurt?

A. In the same wreck Mr. McHone was hurt.

Q. 27. Did you know all those men who were hurt?

A. Yes, sir, all but Yeagans, I don't recall his name by Yeagens, only he was the brakeman with this fellow that I mentioned—if you will pardon me—but personally I wasn't acquainted with him, just knowing him as a brakeman.

Q. 28. The section you work in, does this man-trip go out on the outside or along through a cut and travel for some distance on the outside?

A. Yes, sir.

Q. 29. More than once?

[fol. 512] A. Just one time.

Q. 30. What distance does it travel on the outside there?

A. That distance, in my judgment, is half a mile.

Q. 31. After you finish the day's work and get on that man-trip, what condition are you in? Are you sweaty and hot?

A. Yes, sir, a man working is sweaty and when he get in the man-trip, it's cold and chilly.

Q. 32. And when he comes out in that opening, he has to enter whatever weather is existing at that time?

A. Yes, sir, going in and coming out, too.

Q. 33. Do you use the same tools Mr. White described?

A. Yes, sir, except he left out our long-handled dust shovel.

Q. 34. He uses that, too?

A. Yes, sir.

Q. 35. But just forgot to name it. Mr. Hampton, these man-trips, do they come out of the mine—do you get out of the mine as fast as you go in, as they take you in?

A. No, sir.

Q. 36. Why is that?

A. Under the conditions of the trams hauling loads to the tipple and empties back to the sidetracks.

Q. 37. When you are going in, is the man-trip given priority over the trams hauling coal?

A. Yes, sir.

Q. 38. And when the day's work is over and you get ready to come out, are the trams hauling coal or the man-trips given priority?

[fol. 513] A. The trams are hauling coal and some times we have to wait at the sidetrack until a trip of empties comes up from a distance.

Q. 39. Does that happen very frequently or just now and then?

A. Right often.

Q. 40. Would you say during the period from April 1st up to recently that it took more time to get from the man-station to the outside than it did from the outside to your man-station?

A. Yes, sir.

Q. 41. The section you work in, about how long does it take to ride in?

A. Nine and a half to ten hours.

Q. 42. You misunderstood the question. You get to the mine at what time?

A. About seven o'clock.

Q. 43. And get out of the mine at what time?

A. Four-thirty and five.

Q. 44. Do all the men come out at the same time?

A. As nigh as possible.

Q. 45. All riding the same man-trip come out together?

A. Yes, but possibly there will be a man-trip held up some where.

Q. 46. Are those man-trips held up for the section foreman to make off his records?

A. Yes, sir, I have set and waited numerous times for the section foreman to make up his records.

Q. 47. So far as you know, was there any reason he [fol. 514] couldn't have made his records up outside?

A. They have an office for that purpose.

Q. 48. I believe recently over there the man-trips going in and coming out have been changed?

A. Yes, sir.

Q. 49. You heard Mr. Hagy testify two or three days ago?

A. Yes, sir.

Q. 50. Is his explanation of the way the man-trips are handled now correct?

A. Yes, sir, I think it was.

Q. 51. If you leave at seven o'clock in the morning, Mr. Hampton, or thereabouts, what time do you get to your working place usually?

A. About ten until eight usually.

Q. 52. Do you loiter on the way or go there directly, considering what you have to do?

A. We get there as quick as we possibly can get there, considering what all we have got to go through with.

Q. 53. In other words, it takes you approximately fifty minutes to get to your working place from the time you leave the outside?

A. Yes, sir.

Q. 54. What is the condition of the walkway in the section of the mine you go to after you leave the man-station?

A. It's rather low.

Q. 55. How high is it?

A. About four feet.

Q. 56. How far do you have to walk after you leave your [fol. 515] man-station to your working place?

A. It takes me about eight minutes from the man-station to the face of my place.

Q. 57. About how many feet would you think that was?

A. About nine hundred or nine hundred and fifty, I would think.

Q. 58. In walking that distance, do you walk erect or stooped over?

A. Stooped over.

Q. 59. You carry your dinner bucket and tools?

A. Yes, sir.

Q. 60. How do you carry them?

A. If I just have my dinner bucket, I swing it behind me like that, and if I have my pick and dinner bucket and powder sack, I carry them like that.

Q. 61. If you have to use two hands, you put them down like that, otherwise, you brace yourself?

A. Yes, sir.

Q. 62. Do you have any particular walk-way from where you leave your man-station or is it rough?

A. It is reasonably rough where the coal has fell off the cars on each side of the track.

Q. 63. Do you walk on the ties of the track, between the rails of the track or get off to one side?

A. Generally, we walk on the side of the track.

Q. 64. The side of the track away from the electric wire?

A. Yes, sir, on the opposite side.

Q. 65. How much clearance do you have there, Mr. Hampton?

[fol. 516] A. Some places we don't have so very much clearance and other places, the clearance is all right.

Q. 66. Describe where you don't have much clearance?

A. The spaces I spoke, mentioning we don't have much clearance is meaning it would be dangerous if you tried to stand against the rib for a trip to pass, more than likely you would get cripped.

Q. 67. Because of the space not being wide enough?

A. Yes, sir.

Q. 68. While you are walking that distance, do you have to keep a lookout for approaching trams?

A. Oh, yes, sir.

Q. 69. Do they actually approach you and pass?

A. Yes, sir, the gathering motors.

Q. 70. What do you do if you see a motor approaching?

A. We get a little more pep up and get in the clear.

Q. 71. Do those trams have a light on them?

A. Oh, yes.

Q. 72. And you have a light on your hat?

A. Yes, sir.

Q. 73. Is your part of the mine lighted or do you have to rely entirely on the light from your hat?

A. Down on that part of the section, after you leave the main haulage, excepting where there is switches and derails, you use your light in particular.

Q. 74. About how far are you walking from the closest electric light?

A. I don't know just exactly what that would be. I might [fol. 517] guess at it and might hit it or miss it. I would say about nine hundred and fifty feet, or something like that, might be more.

Q. 75. When you finish your day's work, you reverse your process to get back to the man-station?

A. I do.

Q. 76. How long does it take you to wash up after the day's work is over?

A. It usually takes me about thirty minutes.

Q. 77. Do you get dirty in that mine?

A. Yes, sir.

Q. 78. Does it take you thirty minutes of good scrubbing?

A. It certainly does.

By Mr. Stuart: We would like our same objection to apply to the dirt, also, Your Honor?

By the Court: That objection is considered.

Cross-examination.

By Mr. Stuart:

Q. 1. Where do you live, Mr. Hampton?

A. Baptist Valley; my address is Cedar Bluff, Virginia.

Q. 2. How far is your home from the mine where you work?

A. About seventeen or eighteen miles.

Q. 3. How do you get back and forth?

A. We ride the truck, me and my boy, and he hauls men to the mines.

Q. 4. You mean your son runs one of the trucks to haul men under contract with the company?

A. Yes, sir.

[fol. 518] Q. 5. Now, you expressed the opinion, Mr. Hampton, that the man-trips are dangerous and you mentioned two men who had been killed. Were both of them killed in the same accident?

A. Yes, sir.

Q. 6. Where was that?

A. That was on what is called Jones Fork.

Q. 7. That was at Jewell Ridge?

A. Yes, sir.

Q. 8. How long ago was that?

A. I can't recall the number of years but I think it was probably back in 1935, but I am not positive.

Q. 9. You think it was about eight years ago?

A. Yes, something like that. To make that clear, I would like to say I don't positive know. I haven't kept a record of just the number of years but I was working at Jewell Ridge when it happened and know it actually happened.

Q. 10. You have been working at Jewell Rridge, you said, ever since 1921?

A. Yes, sir, with the exception of a time or two. I would quit and go away for a short space of time, I believe twice during that time.

Q. 11. And this accident when these two men were killed happened a good many years ago?

A. Yes, sir.

Q. 12. Were you on the man-trip yourself when the men were killed?

A. No, sir.

Q. 13. You don't know anything about it except what you have heard?

[fol. 519] A. I know it happened and know our men was killed.

Q. 14. These other three men you mentioned, Mr. Fox and Mr. Whitt and Mr. McHone, how many of them lost any time?

A. Mr. Fox lost one day; Mr. McHone didn't lose any time, and Mr. Whitt lost three or four weeks, I don't know, probably more, right in that neighborhood, of time.

Q. 15. Mr. Hampton, you said you were president of the local of the United Mine Workers there at Jewell Ridge. You have a closed shop contract there with the Company, have you not?

A. Union Shop, we call it.

Q. 16. This truck that you ride in, what do you sit on in that truck?

A. We have a bench.

Q. 17. It's an ordinary pick-up truck?

A. Yes, sir.

Q. 18. With a sort of roof built over it, is it?

A. Yes, sir, we have what we call a cab.

Redirect examination.

By Senator Muse:

Q. 1. One question I should have asked you in chief: During the time you are riding on this man-trip, does your section boss give instructions to the men as to the work?

A. Some times he does, yes, sir.

Q. 2. Is that both going in and coming out?

A. Yes, sir.

Recross-examination.

By Mr. Stuart:

Q. 1. Mr. Hampton, you don't mean by that that the [fol. 520] foreman instructs you as to work to do while you are on the man-trip, do you?

A. Yes, sir, I mean by that in this way, some times he will tell a man a different place he would like for him to work the next day or something like that.

Q. 2. You don't mean that he tells them something in the way of work on the man-trip, while the man-trip is going,—it is that the work is to be done at their working place, isn't it?

A. Nothing only giving them orders about safety rules.

Q. 3. If he gives them orders, he is talking about work for them to do when they get to their working place, isn't he?

A. Certainly so.

Q. 4. You spoke of the lack of clearance at some points between your man-station and your place of work. Have you ever been caught and injured in such a place by a passing motor?

A. No, sir, I haven't.

Witness stands aside.

John Kerr, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. John Kerr?

A. Yes, sir.

Q. 2. I believe you are employed by Jewell Ridge Coal Corporation at No. 1 Mine?

A. Yes, sir.

Q. 3. As a coal loader?

A. Yes, sir.

[fol. 521] Q. 4. You heard Mr. White and Mr. Hampton testify, I take it?

A. Yes, sir.

Q. 5. Do you get into the mine and get out in substantially the same way they do?

A. Yes, sir, that's the only way we have of getting in and out.

Q. 6. You ride the same man-trip?

A. Yes, sir.

Q. 7. What section of the mine do you work in?

A. First North Straight.

Q. 8. That's approximately how far from the main entrance?

A. Around four and a half miles in, the best I could judge. I couldn't say the exact distance.

Q. 9. Have you ever been hurt on one of these man-trips?

A. No, sir.

Q. 10. Have you ever been hurt in the mine?

A. Yes, sir.

Q. 11. How were you hurt?

A. I have been injured in the mines two or three different ways.

Q. 12. You have a scar on your neck. How did you get that?

A. I got that scar while running a motor on second north.

Q. 13. A gathering motor?

A. Yes, sir.

Q. 14. What happened?

A. I was pulling coal from second north straight and [fol. 522] I brought my trip up and set it in and John Day brought his coal out of first, second and third right, and he asked me to couple on and as we dropped back from dropping his trip in, the slate fell and broke the trolley wire and caught me across the neck right here.

Q. 15. Did it knock you unconscious?

A. Yes, sir.

Q. 16. Did you lose any time?

A. No, sir, I didn't make off any accident report.

Q. 17. When was that?

A. That was along in June of this year, if I am not mistaken.

Q. 18. Do some of the man-trips go over that track?

A. Yes, sir, we made up a man-trip right under that rock every day.

Q. 19. And it fell on you?

A. Yes, sir.

Q. 20. You missed the rock?

A. Yes, sir, approximately three feet.

Q. 21. You are now a coal loader?

A. Yes, sir.

Q. 22. On the man-trips you ride, does the section foreman give instructions to the men concerning their work?

A. At various times, he does.

Q. 23. When you get to the man-station in your section, how far do you have to walk over to your working room?

A. I have to talk approximately a thousand feet to where my regular working place is.

[fol. 523] Q. 24. What is the height of the roof where you walk there?

A. Around forty-six to forty-eight inches.

Q. 25. In walking, is it necessary for you to keep down that far below the surface of the top?

A. Yes, sir.

Q. 26. Does that require you to walk in a stooped-over position?

A. Yes, sir.

Q. 27. How far is the closest electric light from your working room, would you say?

A. It would be approximately fifteen hundred feet from where my regular working place is.

Q. 28. I take it you get your powder and detonators the same as Mr. White testified?

A. Yes, sir, in the same location.

Q. 29. The same routine exactly?

A. Yes, sir.

Q. 30. In walking that distance, are you guided mainly by the light in your hat?

A. Yes, sir, that's the only light we have.

Q. 31. Do these lights ever go out?

A. Some times.

Q. 32. What do you do when they go out?

A. We have to wait until some one comes by with a light or the motor comes by with a light, and he will bring us another light. We have a spare at the man-station.

Q. 33. What kind of working surface do you have?

A. We have the plain ground where the coal has been [fol. 524] mined there.

Q. 34. Is it smooth or does the coal drop off there at times?

A. We have coal from the cars and that what's fell from the roof.

Q. 35. Is it rough?

A. Yes, sir.

Q. 36. Do you have to keep your light on it to see the condition?

A. Yes, sir.

Q. 37. How wide is the space you walk in?

A. It will vary; some places four feet; others it won't be over thirty inches. It won't be over that.

Q. 38. Is there always room for you to squeeze over against the side wall for him to pass?

A. It will vary. There is places you do have and places you don't have.

Q. 39. Do these motors have lights on them?

A. Yes, sir.

Q. 40. If you are walking in a narrow place where the motor can't pass you without hurting you, what do you do?

A. Quite naturally, I try to get out of the way.

Q. 41. Have you always been able to do that so far?

A. Yes, sir.

Q. 42. When you reach the room, how long before you start loading coal?

A. It varies. Some days you have the cut to clean and make preparation and other days we won't.

[fol. 525] Q. 43. Some days you have to do more timbering?

A. Yes, sir. You see I work pillar work all the time and some days I have nothing to do and will go back to a room.

Q. 44. Some of that pillar work is cut by machine and some by hand, is it?

A. Yes, sir.

Q. 45. Getting out of the mine is about the same process Mr. White testified about, is it?

A. Yes, sir.

Q. 46. You use the same tools he uses?

A. Yes, sir.

Q. 47. And bring them back and forth to be sharpened like they do?

A. Yes, sir.

No Cross-examination.

Witness stands aside.

JOHN FRANKLIN, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are John Franklin?
A. Yes, sir.
Q. 2. You work for the Jewell Ridge Coal Mining Company?
A. Yes, sir.
Q. 3. At its No. 1 Mine?
A. Yes, sir.
Q. 4. You are a coal loader, I believe?
[fol. 526] A. Yes, sir.
Q. 5. How long have you been working around mines, John?
A. About thirty-five years.
Q. 6. In what section do you work in?
A. Parallel Number Eleven.
Q. 7. Parallel Section?
A. Yes, sir.
Q. 8. That's one of the furthest sections, I believe, from the portal?
A. Yes, sir.
Q. 9. How far back in there is it to where you work, the best you can guess?
A. I would say around six and a half miles.
Q. 10. It seems like a long distance back there, does it?
A. Yes, sir.
Q. 11. You have heard Mr. White and these other men testify. Do you get in the mine and come out about like they do?
A. Yes, sir.
Q. 12. You ride the same man-trips?
A. Yes, sir.
Q. 13. And get your powder the same way?
A. Yes, sir.
Q. 14. Carry the same tools?
A. Yes, sir.
Q. 15. How far do you have to walk from your man-station back to your working room, approximately?

A. I would say between three and four thousand feet from the man-station.

[fol. 527] Q. 16. You have to walk that far?

A. From the man-station, yes, sir.

Q. 17. You get off at the man-station?

A. Yes, sir.

Q. 18. You have to walk as far as three thousand feet?

A. Yes, sir.

Q. 19. How long does it take you to walk it, John?

A. Fifteen minutes.

Q. 20. You can't walk three thousand feet in fifteen minutes, can you?—Any way, whatever distance it is, you walk it?

A. Yes, sir.

Q. 21. In what position do you walk it?

A. Some times bent over and some times practically straight up.

Q. 22. Do you walk much of that distance bent over?

A. Most of it in the section where I work is straight up.

Q. 23. How far do you have to walk bent over?

A. I imagine five or six hundred feet; something like that.

Q. 24. You have the same tools these other men have?

A. Yes, sir.

Q. 25. John, does the section foreman give instructions to the men as to their work while on these man-trips?

A. Some times, yes, sir.

Q. 26. You have to take your tools out and have them sharpened like the other men?

[fol. 528] A. Yes, sir.

Q. 27. The distance you are walking from your man-station back to where you work, what kind of surface do you have to walk on? Is it smooth or rough?

A. You have to go down the main line four hundred and some feet and it's pretty clear by the side of the track and then it's kind of rough on up to my work place.

Q. 28. Lumps of coal and slate on the side?

A. Yes, sir.

Q. 29. What kind of clearance do you have between the track and the side wall?

A. I would say between five and four feet in some places.

Q. 30. Do you always have room enough for the motor to pass you?

A. Yes, sir.

Q. 31. You are not bothered on your section with the motor passing?

A. No, sir.

Q. 32. Have you ever been hurt on a man-trip, John?

A. No, sir.

Q. 35. Do you know of anybody being hurt on a man-trip that we haven't asked about today?

A. Yes, sir.

Q. 34. Who?

A. Mr. Webb got his lip cut in a man-trip wreck.

Q. 35. How long ago has that been?

A. I guess it's been possibly two months ago.

Q. 36. How was his lip cut, John, do you know?

[fol. 529] A. He fell or tripped, some way, and fell.

Q. 37. Did you see his mouth bleeding?

A. Yes, sir.

Q. 38. Was it cut on the man-trip?

A. Yes, sir.

Q. 39. The same man-trip you were on?

A. No, sir.

Q. 40. But you don't know exactly how it happened?

A. The man-trip hit another trip with a gathering motor between them.

Q. 41. You mean two sections ran together?

A. No, there was a coal trip and a gathering motor hit the coal trip and it hit it.

Q. 42. The man-trip ran into something.

A. Yes, sir, it ran into a trip of coal and a gathering motor.

Q. 43. The man-trip ran into a trip of coal that had a gathering motor on it?

A. Between it.

Q. 44. Do you know of any one else who got hurt?

A. Randolph Haynes had a jar of milk.

Q. 45. What happened, did he drink it?

A. It busted and cut him all over the face.

Q. 46. I believe that was a violation of the rules to have anything glass on that man-trip, wasn't it?

A. Yes, sir, wherever I worked at, they had a rule that no man should carry glass in the mines.

Q. 47. And this particular man did and got cut with it?

A. Yes, sir.

[fol. 530] Cross-examination.

By Mr. Stuart:

Q. 1. John, you say your section was parallel?

A. Yes, sir.

Q. 2. And you say that's three thousand to four thousand feet from the entrance to the mine?

A. No, sir, from the man-station.

Q. 3. You say your section is three or four thousand feet from your man-station?

A. Between three and four thousand feet to my working place.

Q. 4. You never measured it, I guess, did you?

A. I just suggested that. I didn't measure it.

Q. 5. That's your best suggestion?

A. I judged by the time it takes me to walk it.

Q. 6. If the man shows something different, you are not going to argue with the map, are you?

A. You can't argue with figures.

Q. 7. You say your section is about six and a half miles from the outside of the mine?

A. From the outside portal, that's what I suggested.

Q. 8. And the same thing about your never having measured the other place applies to that, too, does it?

A. I have walked it many a time.

Q. 9. You have walked the whole six and one-half miles many a time?

A. Yes, sir.

Q. 10. Why did you do that?

[fol. 531] A. Didn't have anything to do and got my bucket and lit out and timed myself to the lamp house.

Q. 11. You mean when you finished the day's work, you wouldn't wait on the man-trip, you just started out?

A. Yes, sir. If I didn't have anything to do when I went in there, I would get my bucket and come on back.

Q. 12. And your best estimate of that is six and one-half miles?

A. An hour and thirty-eight minutes to walk it.

Q. 13. You are a pretty good walker, aren't you, John?

A. Yes, sir.

Q. 14. That's doing a little better than four miles an hour, isn't it?

A. I don't know, but——

Q. 15. You must have a mighty smooth road and all the conditions for walking must be mighty good to make it in that, don't you reckon?

A. That's the time I would make it in. The best I could get.

Q. 16. All right, if the map shows it is less than that, you aren't going to argue with the map, though, are you?—You are a coal loader, you say, John?

A. Yes, sir.

Q. 17. You are paid on the number of tons you load?

A. Yes, sir.

Q. 18. So much a ton?

A. Yes, sir.

Q. 19. In the quarter ending June 30th this year, you got [fol. 532] an average of $11.02 a shift, didn't you, for loading coal?

A. Well, yes, sir, about that.

Witness stands aside.

JIMPER BARTLEY, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. Jimper Bartley?

A. Yes, sir.

Q. 2. I believe you are also employed by the Jewell Ridge Coal Mining Company?

A. Yes, sir, Jewell Ridge Coal Corporation, No. 1 mine.

Q. 3. How long have you been working there, Mr. Bartley?

A. I believe I went back to Jewell Ridge this last time about the 7th or 8th of December 1940.

Q. 4. Had you worked there before?

A. Yes, sir, I went there in 1935.

Q. 5. How long have you worked in and around coal mines?

A. Approximately twenty-two years.

Q. 6. How old are you?

A. Thirty-eight.

Q. 7. You went in the mines when you were about sixteen?

A. Yes, sir.

Q. 8. I believe you are what is known as a motorman?

A. I operate a gathering motor.

Q. 9. What do you do with a gathering motor?

A. I gather loaded cars and bring them to the sidetrack and take empties back to the places for the men.

[fol. 533] Q. 10. You gather up the loaded cars in your section that you work in?

A. Yes, sir.

Q. 11. What section do you work in?

A. Gravel Creek.

Q. 12. Do you also take empty cars to the men working in Gravel Creek?

A. Yes, sir.

Q. 13. And you take these loaded cars out to the main track?

A. Yes, sir, and put them in the coal hole out there.

Q. 14. Where they are picked up by the main tram?

A. Yes, sir.

Q. 15. Before you go inside, take your morning routine, what time do you get to your place of work?

A. I get to the lamp house by bus from Richlands at approximately six-thirty, maybe a little later, maybe a little earlier, and I get off the bus and get in line to get my light, and usually, as a rule, there are something like thirty or thirty-five men rides the bus and we can't all be first so we take it in turn to get in line to get our light. When I get up to the window to get my light, I deposit my check with my payroll number and get my lamp and then go to the oil house and get a can of oil to oil my motor with.

Q. 16. Where is the oil house with reference to the lamp house?

A. Across the main line track.

Q. 17. How much oil do you get?

[fol. 534] A. A quart of oil.

Q. 18. What do you get it in?

A. A feed can, we call it.

Q. 19. Do you use the same one, day after day?

A. Yes, sir.

Q. 20. Do you have a locker or something that you put it in?

A. Yes, sir.

Q. 21. I believe you have a locker you open from the outside and put your oil can in and the man in the oil-house opens it from the inside and puts the oil in?

A. Yes, sir.

Q. 22. So when you go to get your oil can in the morning, it is filled?

A. Yes, sir, most of the time.

Q. 23. What do you do then?

A. I go get my oil can and then I go up on what we call the yard where the tracks branches off around the shops.

Q. 24. Something like a yard on the railroad?

A. Something of a similar nature, and I hunt out the motor I operate during the shift.

Q. 25. Do you use the same motor each day?

A. Yes, sir.

Q. 26. Does it have a number on it?

A. Yes, sir.

Q. 27. Assuming your motor is No. 1——

A. It is No. 5;

Q. 28. What do you do with it?

[fol. 535] A. I get my oil and go up and get my motor and most of the time, I usually oil it pretty well where it is sitting.

Q. 29. Do you oil your motor every morning before you take it in?

A. I oil it every day once and some times twice. I may not oil it before I go in but I oil it once and some times twice a day.

Q. 30. Do you usually oil it before you go in?

A. Yes, sir.

Q. 31. Is that your general custom?

A. Yes, sir, with all motormen.

Q. 32. Then what do you do with it?

A. You make preparation to get that up towards where you start inside the mine.

Q. 33. Why don't you run it on up?

A. You can't do it all the time. I believe they have some where around seven or eight tram motors there, I haven't counted them, and maybe they are switched in on the track ahead of you.

Q. 34. Suppose you go over and find four motors sitting in front of your motor, what do you have to do?

A. If there is side track room or space where you can sidetrack these trams off ahead of you, you get them on the side track so it will turn you loose to get to the sand house.

Q. 35. After you have switched, if necessary, and gotten a clear track, what do you do?

A. Run the motor to the sand house and sand the motor up.

Q. 36. How many places does it have to be sanded?

[fol. 536] A. Four sand-boxes.

Q. 37. They hold how much?

A. I forget. Approximately two bushels of sand. They might not get that much.

Q. 38. But if all four places are empty, they hold that much?

A. Yes, sir.

Q. 39. Are they seldom all empty?

A. It's not very often they are all empty.

Q. 40. Do you have any equipment or tools that you carry in?

A. I have stationary tools that goes with the motor, that's what is called standard equipment on the motor. We have two retractors but they stay on all the time.

Q. 41. Do you have any tools that you have to put on for each trip before you go in?

A. No, sir, I do not.

Q. 42. Do you have a helper?

A. Yes, sir.

Q. 43. Who is your brakeman?

A. L. G. Wallace.

Q. 44. Does he help you oil and sand the motor, generally speaking?

A. He seldom ever helps me oil; he usually helps me sand up.

Q. 45. I believe you are in charge of the motor?

A. I am responsible for the motor.

Q. 46. After you have gotten your motor oiled and sanded, [fol. 537] what do you do with the motor?

A. After we have got the motor sanded up, and oiled up, we usually mess around and talk with the other men until time to start inside.

Q. 47. What time do you start in?

A. At seven o'clock. Maybe the man-trip will leave ahead of us and some times we go in ahead of the man-trip; according to how we switch out on the main line.

Q. 48. Do you more often go in behind them than in front of them?

A. More often we go in behind them.

Q. 49. After the man-trips have run, who gives you the order to go in?

A. The dispatcher or general mine foreman generally tells a man when he can start inside the mine. The motorman finds out before he starts in because he is afraid he might meet somebody coming out.

Q. 50. Do you find out from the dispatcher whether the track is clear?

A. Usually, yes, sir.

Q. 51. Is the dispatcher on the inside or outside of the mine?

A. He is always on the inside of the mine in the morning.

Q. 52. When you go into the mine under the direction of the dispatcher, for instance, does he give you a clearance all the way to your station or section or do you have to switch off from time to time?

A. You seldom have to switch off in the morning going [fol. 538] in; usually it's pretty direct through to your section in the morning.

Q. 53. Approximately, as best you can estimate, how far is it back to your section?

A. I would make an estimate of four, maybe four and a half miles; that's Gravel Creek.

Q. 54. When you get to Gravel Creek, you go to what portion of it?

A. That's all there are of it, there at that man-station.

Q. 55. Do you have a man-station at Gravel Creek?

A. Yes, sir.

Q. 56. Do you go to the man-station?

A. Yes, sir.

Q. 57. What do you do while you are there?

A. Usually, as a rule, I couple on to the back end of the empties when the tram pulls down, to let the man out, so he can go back out to the dispatcher's office and gather up a load of coal or something.

Q. 58. You get them out of the way so the tram can proceed ahead?

A. No, sir, so he can come back to the dispatcher's office.

Q. 59. So he can reverse his trip?

A. Yes, sir.

Q. 60. Do you place the empty cars for the miners working in your section?

A. Yes, sir.

[fol. 539] Q. 61. And when those cars are filled, you take them away?

A. Yes, sir.

Q. 62. What time of day does your pay start?

A. Eight o'clock.

Q. 63. And ends at what time?

A. Three-thirty.

Q. 64. You take off how much for lunch?

A. I take off thirty minutes; some times I use it and some times I don't use all of it.

Q. 65. At what place are you, usually, at eight o'clock?

A. Usually at my designated section.

Q. 66. At your man-station?

A. Yes, sir.

Q. 67. At three-thirty have you gotten back to your station or are you out on the section some where?

A. Some times I am up in the section, some times maybe I am a few minutes late if I happen to have a loaded car, where it has fallen in or something, I generally try to get it, regardless of whether it is quitting time or not.

Q. 68. You try to clean up?

A. I try to give them what cars they need and get them off from the dangerous places.

Q. 69. Do you try to leave a man a car so he can start the next morning?

A. No, sir, I do not, unless it is in a room where it might fall in. We have orders not to leave cars on pillars. You may have the top fall in on it or have what is known as a [fol. 540] pillar fall.

Q. 70. And the coal come down on it?

A. Yes, sir, the excess weight coal might come down on it.

Q. 71. At the end of your day's work, you get back to your section on Gravel Creek around three-thirty or a little after?

A. I figure my day's work is done, and I turn in my report of how many cars I pulled.

Q. 72. Who do you give that report to?

A. The section foreman. I wouldn't know what to report until I finished my day's work.

Q. 73. How long do you spend at the man-station until you start out?

A. Not so very long; maybe five minutes, some times ten.

Q. 74. What are you doing during that time?

A. I maybe will be giving my boss the report or talking to the coal loaders about the day's work.

Q. 75. How do you get out of the mine?

A. We get out practically along the same line of going in.

Q. 76. Who gives you permission to come out?

A. Some times I what is known as tail the man-trip out.

Q. 77. That is, to get on the rear of the trip as a kind of protection?

A. Yes, sir, in case the trip broke loose on the grade, the motor would be there to keep the cars from running away or keeping any one from getting hurt.

[fol. 541] Q. 78. If you are not tailing the man trip, what do you do?

A. I turn my report over to the boss and he will tell me to go on out.

Q. 79. Do you phone in to the dispatcher?

A. We have to go eight or nine hundred feet from our section to the telephone, and we have to run that and look out for a tram.

Q. 80. You have no way of signalling?

A. No, sir, just merely watch for the tram.

Q. 81. Do you have any way of letting other trams know you are coming?

A. No, sir.

Q. 82. Do you have any horns on those trams?

A. No, sir. They have one motor that has an electric-air horn.

Q. 83. That's not the one you are on?

A. No, sir.

Q. 84. Do you have an electric light on it?

A. Yes, sir, you have a head light on each end of the motor.

Q. 85. Do you drive that distance of nine hundred feet rather slowly so you can back up if necessary?

A. No, I don't know that you would say so slow. You go about as fast as the motor will run.

Q. 86. And keep a lookout for what is coming?

A. Yes, sir.

Q. 87. When you reach the nearest phone, what do you do?

A. Ask the dispatcher about the road to the outside.

[fol. 542] Q. 88. And he gives you instructions?

A. Yes, sir.

Q. 89. Will he usually give you instructions as to a clear track all the way out or part way?

A. You never ask him about the right of way out. You will ask him how about the road down First North.

Q. 90. You mean that's the first telephone?

A. No, that's the first I come to, and if there is nothing coming down, he will tell you to come on up.

Q. 91. Why doesn't he give you a clear signal to come on out?

A. I don't imagine he could hardly do so.

Q. 92. In getting your motor out after the day's work is over, is the right of way given to the trams hauling coal?

A. It generally is, if the tram happens to be in transit between you and the tipple, usually the preference is given to the tram.

Q. 93. He says come on up and you come to the dispatcher's office. What do you do there?

A. You usually tell him how many cars of coal you have gotten that day, and how many cars you have left in the load-hole and how many empties you have left.

Q. 94. You make a report to him?

A. Yes, sir.

Q. 95. Does he give you clearance as soon as he can the rest of the way?

A. He usually gives you right of way as far as he can, some times all the way through to the shop and some times [fol. 543] it isn't. He will tell you where to call him and you go to that phone and call him back.

Q. 96. You come out all the way if you can and if you can't you go as far as you can by calling him back for further directions?

A. Yes, sir.

Q. 97. When you get on the outside, what do you do with your motor?

A. You switch off the main line to the sand house or shop track.

Q. 98. Do you leave your motor there all night?

A. No, it is usually used two shifts.

Q. 99. So far as you are concerned, that's where you leave it?

A. Yes, sir.

Q. 100. Do you make any report to any one else on the outside?

A. From April 1st to June 20th, you went in the mine office and reported on a book, sheet of paper, the condition your motor was in.

Q. 101. You go in the mine at what time in the morning?

A. Approximately seven o'clock or a little after.

Q. 102. And you come out about what time?

A. We figure we may be four-fifteen or four-thirty, maybe a little after.

Q. 103. I believe you said you are generally at the man-station for your section about eight o'clock?

A. Approximately eight o'clock.

[fol. 544] Q. 104. And you get back there about three-thirty or a little after?

A. Yes, sir, as a rule.

Q. 105. The rest of the time is spent in the working places?

A. Or gathering coal.

Q. 106. And between three-thirty and four-thirty, you are coming out?

A. Yes, sir.

Q. 107. What time does your pay start?

A. Well, eight o'clock.

Q. 108. What time does it end?

A. Three-thirty, if I am not tailing the man-trip.

Q. 109. And you take thirty minutes for lunch?

A. Yes, sir.

Witness stands aside.

At this point, it being 5:00 o'clock P. M., Court was adjourned until tomorrow, Tuesday, the 23rd day of November, 1943, at 9:30 o'clock A. M., at which time the trial of this case was resumed.

STIPULATION

It is stipulated and agreed that throughout the period from April 1, 1943, to June 20, 1943, the mines of the Jewell Ridge Coal Corporation were operated on a six-day week basis, and that the witnesses who have testified for the defendants worked during that period in some weeks more than forty hours a week on a face to face basis.

By Mr. Rogers: If your Honor please, we have interrupted the testimony to get in one stipulation and now we [fol. 545] should like to get in another, with your permission.

STIPULATION

It is stipulated between counsel that certainly back as far as 1912, Section 2 of Article II of the Constitution of the United Mine Workers of America, under the heading "Objects", contained this clause:

> "To demand that no more than eight hours from bank to bank in each twenty-four hours shall be worked by members of our organization".

It is further stipulated that that same identical language has appeared in every subsequent Constitution from year to year, except that in 1920, the word "eight" was changed to "six".

By the Court: Is that correct, gentlemen?

By Mr. Richardson: We agree that these facts are as Mr. Rogers states, but the stipulation is merely to the facts and not as to the relevancy or admissibility in evidence.

By the Court: Very well, let it be so stipulated upon that understanding.

JIMPER BARTLEY, the witness heretofore introduced on behalf of the defendants, being recalled, testified as follows:

Cross-examination.

By Mr. Stuart:

Q. 1. You say your section is the Gravel Creek Section?

A. Yes, sir.

Q. 2. And your job there is to go around with your motor [fol. 546] and deliver the empties to the various rooms and pick up the loads and bring them back to where the main line motors can get them?

A. Yes, sir.

Q. 3. Now, in order to get to your section in the morning, you say you ride your motor there?

A. Yes, sir.

Q. 4. You don't haul anything in with your motor,—you bring yourself and your brakeman in with your motor, do you?

A. Well, generally speaking, you do. Some times we have —maybe a coal loader will miss a man-trip or something, and we take a car and take him in.

Q. 5. What I am talking about is on your job of hauling mine cars, you don't begin hauling any mine cars until you get on your section?

A. Well, I say once in a while, I will do that, maybe once a month or once every two months, we will take a car and take something in it. That's where we start our work, on our section, but we claim our work pretty well starts from the time we reach the mine.

Q. 6. That's what you are claiming now on account of your items of oiling and sanding your motor, that's the reason you are claiming that?

A. We have always did that.

Q. 7. You are not claiming that your work starts before you get on the section on account of any hauling you do before you get on the section, are you?

A. We don't haul anything except like I say there.

[fol. 547] Q. 8. When you do haul any mine cars before you get on the section, your work is paid for from the time you start the hauling, isn't it? If you haul extra, you get paid extra?

A. Not generally always.

Q. 9. Do you generally some times?

A. Once in a while, we do.

Q. 10. Now, your brakeman rides in with you in the morning?

A. Yes, sir.

Q. 11. He rides out with you when you get through at the end of the shift, does he?

A. Yes, sir.

Q. 12. When you go in in the morning, do you some times tail a man-trip with your motor?

A. Yes, sir.

Q. 13. When you do that, when does your pay start?

A. Well, we get eight hours a day regardless of how long we are on.

Q. 14. And if you start in in the morning, tailing a man-trip from the portal, the entrance of the mine, your pay doesn't start any sooner than if you didn't do that?

A. If we start inside at seven o'clock and return back at four o'clock, we get eight hours a day instead of seven.

Q. 15. The same thing happens if you tail a man-trip or any other trip coming out at the end of the shift?

A. We get paid for what time it takes us. If it is thirty minutes, we get paid for thirty minutes; forty minutes, we get paid for forty minutes; an hour, we get paid for an hour.

Q. 16. And if there are two of you, and one of you tails [fol. 548] the man-trip going in in the morning, and the other tails it coming out, you get paid for the time you spend on that?

A. He gets paid for what time it takes him to take it in and I get paid for what time it takes me to bring it out.

Q. 17. And if you tail it in and he tails it out, it's the same thing?

A. The same process.

Q. 18. Now, you speak of information that you give your section foreman and also information that you give the dispatcher at the end of your day's work on the section. When you give information to the section foreman at the man-station before you come out, that information is about the number of cars that have been loaded in the various rooms on your section during the day, is it?

A. Yes, sir.

Q. 19. And the section foreman takes down that information that you give him, does he?

A. Yes, sir.

Q. 20. Then, when you talk to the dispatcher before you come out, you tell him how many empties are left on the section and how many loads are left there?

A. Yes, sir, on the sidetracks.

Q. 21. And that's the information you give before coming out?

A. Yes, sir.

Q. 22. Does the dispatcher take that down or does he phone it right in?

A. He makes a note of it. He has forms there that he puts it down.

[fol. 549] Q. 23. Now, Mr. Bartley, you said there were some occasions, perhaps once a month, when you might haul some man in with your motor who had missed a man-trip, and you said you some times generally didn't get paid for that. If you haul a man-car in, you can get paid for it if you apply for it, can't you?

A. Well, I wouldn't say that I couldn't and I wouldn't say that I could.

Q. 24. When you take a man in like that who has missed a man-trip, you figure you are doing it to accommodate him and don't make any claim for it; is that it?

A. I imagine I must do something like that, for I never did ask them to pay me for it.

Q. 25. Your use of your motor in going into your section of the mine in the morning is a convenience to you, you would rather ride the motor in than to ride the man-trip in, wouldn't you?

A. I imagine so.

Q. 26. The same way coming out at the end of the shift, you would rather ride the motor out than ride a man-trip?

A. Riding a motor is some more comfortable than riding a bank car.

Redirect examination.

By Senator Muse:

Q. 1. The motor you ride in, is that the same motor you use during the day to gather the cars and place them around?

A. Yes, sir.

Q. 2. When you tail a man-trip in and tail it out, also, between April 1 and June 20th, how much time were you [fol. 550] allowed a day?

A. We were allowed one hour a day, approximately, what I mean, whatever amount we—we just got eight hours a day, seven hours at our usual working place and one hour for tailing the man-trip.

Q. 3. Am I correct in saying that during that period from April 1 to June 20, you were given one hour a day for doing that?

A. Yes, sir.

By Mr. Stuart: I understand him to say he didn't tail it in and out on the same day.

Q. 4. Did you ever tail a man-trip in and out on the same day?

A. Yes, sir.

Q. 5. Between April 1 and June 20?

A. I believe it was between that time.

Q. 6. If you did, how much time were you allowed for that tailing business?

A. I was allowed one hour a day.

Q. 7. Suppose it took an hour and a half?

A. I was allowed one hour.

Q. 8. Or two hours?

A. I got one hour a day.

Q. 9. Regardless of what time it took?

A. Yes, sir.

Q. 10. How long did it take you, on an average?

A. It took an hour and a half to two hours.

Q. 11. It usually took more than an hour and up to two hours?

[fol. 551] A. Yes, sir.

Q. 12. For which I understand you were allowed one hour's extra pay?

A. Yes, sir.

Q. 13. I may have brought this out on direct examination. If so, I don't recall it. Mr. Bartley, generally speaking, what time did you go in the mine in the morning?

A. Approximately around seven o'clock.

Q. 14. And come out at what time, approximately?

A. Around four-fifteen; maybe four-thirty; maybe later.

Recross-examination.

By Mr. Stuart:

Q. 1. Mr. Bartley, you were talking about—in answer to Senator Muse's question just now, about what happened between April 1 and June 20, during which period, as I understood, you said there were occasions when you tailed the man-trip both in and out. Did anything happen on June 20th which stopped that?

A. Well, I wouldn't—I don't believe I would want to state it was on June 20th.

Q. 2. What did June 20th have to do with that?

A. I don't know whether it had anything to do with tailing it both ways.

Q. 3. Was it stopped?

A. Some time between April and I will say—between April and November,—that's seven months——

Q. 4. You mean between April and this present month?

A. Yes, sir, we—I believe I asked Mr. Hagy why it was I wasn't getting all the time it taken me to tail the man-

trip and he said he thought we was getting paid, and I [fol. 552] told him we had not been and he told the foreman I worked for to count the time and check the time, and see that I was getting paid for all the time I taken, and some time during that space of time, me and Mr. Horton was taking time about tailing the man-trip in and then after that they put it that he would tail it in and me tail it out.

Q. 5. And you have been getting, since that date, whatever it was, you have been getting all the time you actually took?

A. Yes, since I taken the question up with Mr. Hagy.

Q. 6. And they figured back to see that you got paid for the actual time you put in, did they?

A. Not all the way back.

Q. 7. How far back?

A. I got four hours, the foreman turned me in four extra hours dated from the time I taken it up with Mr. Hagy.

Q. 8. Do you think that change was made some where around June 20th?

A. That he tailed it in and me tailed it out?

Q. 9. Yes, when they began paying you for the actual amount of time you took instead of paying you for an hour?

A. I couldn't exactly say. I have my time down but I have it at home. I don't have any record of it here with me and I wouldn't want to say it was later than June 20th or wasn't after June 20th, by to my opinion, it was after June 20th. I wouldn't want to be positive on the question.

Q. 10. Before that time when you brought that question up, had you made any objection before about getting a [fol. 553] flat hour's time when you tailed a man-trip, when you brought up the question about not getting as much time as you actually took?

A. I believe it was some where in April a number of us motormen taken up this question of time with the mine management and had a grievance case to that effect, asking for that time, what time the contract allowed us for pulling man-trips. I won't say positive it was in April, though I believe maybe the 19th or 26th, along in there some where, and approximately along at that time, they taken it away from the gathering motors and put it on the tram motors to work the man-trip.

Q. 11. As a result of that grievance and the action on it, the previous plan of allowing you a flat hour, which had

been the regular way before that, was changed to allow you the exact time, whatever it was?

A. No, I don't think it happened that early. It was later than that.

Q. 12. It happened after the grievance was made?

A. Yes, some time after that.

Q. 13. It was put up to the management in your grievance and at some subsequent time, the management and the grievance committee agreed on the time it actually took?

A. That was after I went to Mr. Hagy myself, me and one of the mine committeemen.

Q. 14. That was in your individual case?

A. Yes, sir.

Re-direct examination.

By Senator Muse:

Q. 1. Am I correct in understanding that you get extra [fol. 554] pay only when you tail in a man-trip or tail it out?

A. Yes, that's the only time.

Q. 2. If you simply drive your motor in to the place you work, am I correct that you are not paid for that time?

A. No, sir.

Witness stands aside.

Omer Ketron, another witness, introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. Omer Ketron?

A. I am.

Q. 2. How old are you?

A. Thirty-one years old.

Q. 3. I believe you are employed by the Jewell Ridge Coal Corporation?

A. I am.

Q. 4. You have been employed how long?

A. Well, I took my first job with the Jewell Ridge Coal Corporation in 1931, and since that time, I have been away from there about two years, I guess.

Q. 5. Have you been following the mining business since 1931?

A. I have been following the mining business since I was sixteen years old, immediately after my sixteenth birthday, that would have been about 1928.

Q. 6. Where do you live, Mr. Ketron?

[fol. 555] A. I live at Seaboard, a small mining camp about five miles from the Jewell Ridge Camp.

Q. 7. And I believe you are what is known as a brakeman?

A. That's right.

Q. 8. You are also one of the defendants in this case?

A. I am.

Q. 9. What is your connection with the Local Union?

A. I am recording secretary and a member of the mine committee.

Q. 10. Mr. Ketron, what time do you go to work in the morning?

A. Well, it's not always exactly the same time. It's usually around six-thirty.

Q. 11. A. M.?

A. That's right, of a morning.

Q. 12. What's the first thing you do when you arrive in the morning, Mr. Ketron?

A. I come to work on a bus and I get off and get in line to get my light.

Q. 13. You get your lamp just about like the other men have detailed?

A. That's right. Just about the same procedure.

Q. 14. Who is the motorman for whom you brake?

A. Elmer Hooker.

Q. 15. In what section do you work?

A. First North Straight.

Q. 16. After you get your lamp, what do you do? What's the first thing after that in the order of your day's work?

[fol. 556] A. Well, I put my lamp on my head and go out to the motor-barn. I guess any one not acquainted with mines would call it a yard.

Q. 17. That's where the motors are?

A. That's where the motors are all set back.

Q. 18. Is there anything overhead or just the sky?

A. That's right. They can't get them all under the shelter however.

Q. 19. Some are in the shelter and some are not?

A. Yes, sir, 00 and I hunt up the motor I work on,—in my instance, it's No. 8, and I set my bucket on the motor.

Q. 20. You mean your lunch bucket?

A. Yes, sir.

Q. 21. Do you carry your water in the bucket, too?

A. That's right.

Q. 22. Is that generally customary with the men?

A. Yes, sir.

Q. 23. After you put the bucket on the motor, what do you do?

A. As quickly as possible, we get shifted out from whatever might have us blocked.

Q. 24. You mean you and the motorman?

A. That's right. I help him in case there is any switching to do. I do all I can to help him start.

Q. 25. Is there much switching to be done ordinarily?

A. If they have set any of the large tram motors in this track, as they usually do, they must be switched out in the clear so the gathering motor can move up to the sand house. [fol. 557] Q. 26. Do you usually find more than one of the large tram motors in front of No. 8?

A. Some of them are always sitting in there. I don't recall a single instance that one hasn't been there.

Q. 27. So you have to do some shifting every morning?

A. Yes, sir, that's right.

Q. 28. Do you vary in amount, depending on how many motors are in front of you?

A. Yes, sir.

Q. 29. After you have gotten your motor cleared, what do you do?

A. We go up to the sand house and sand the motor up. We have two large steel hickeys about that long, made in the shape of an ice-cream cone, and we get one of those each and fill the boxes up on the motor.

Q. 30. Do they contain sand*ed*?

A. That's right. We dip the sane up out of a large box. It's about as large a box as the bar is long there.

Q. 31. Who oils the motor?

A. My buddy does that. Some times I help.

Q. 32. You are the buddy of the motorman?

A. I am the buddy of the motorman. If there is anything I can't do by myself, I help him.

Q. 33. You usually help do the sanding?

A. Yes, I always help do the sanding.

Q. 34. And some times help do the oiling?

A. Yes, sir.

Q. 35. Who gets the oil can?

A. My buddy does.

[fol. 558] Q. 36. After the oiling and sanding has been done, what do you do with the motor?

A. Well, we stay there until we are given the signal to go in.

Q. 37. Do you ever carry any tools in with you?

A. No, we don't have any tools other than just the regular equipment on the motor.

Q. 38. Which stays on the motor?

A. That's right.

Q. 39. The job of the gathering motor is to gather up loaded cars and take empty cars back to the miners?

A. That's right.

Q. 40. Who is it gives the signal to go in?

A. As a usual thing, the dispatcher does that.

Q. 41. Is he on the outside at that time?

A. That's right.

Q. 42. When he gives you the signal to go in, are you able usually to go directly to your section, First North Straight, or do you have any switching to do or sidetracking to do usually?

A. Well, it depends upon whether we get started in ahead of the man-trips or behind them. Some times some of the motors are switched over on the main line ahead of the trams and some of them are in the sidetrack by the tram house.

Q. 43. Suppose you get started on in?

A. If we get started on, without interference, except we have to stop for derails and so forth.

Q. 44. If you get in behind the tram, do you encounter any delay?

[fol. 559] A. Yes, these long trips that was between, I believe, about June 26th or 27th, some where along there, and up until October or possibly November 1st; when they installed the new system of man-trips,——

Q. 45. But under the old system——?

A. That's right, if we got behind the man-trips it was slow. They had to stop along and pick up men and we would pull out as they give us room to pull out.

Q. 46. You had to adjust yourselves to the main man-trip putting off cars to be taken down to the various sections?

A. That's right.

Q. 47. What duties did you have while going in in the morning? You were brakeman and not operating the motor, were you? Did you have any switches to throw, for instance?

A. At the dispatcher's office there is what I would term a safety switch, it's a switch at the top of the First North grade that they keep thrown for the empty chute or empty sidetrack. It's a regular sidetrack there and it's to keep anything that might run away and get loose up there from going down that steep grade down into First North. It's very near a mile down there and all down grade, anything that gets loose and runs away keeps going faster and faster.

Q. 48. And you throw the switch so as to divert it and keep it from going down into that section?

A. That's right.

Q. 49. Do you throw any other switches?

A. I have two derails,—that's rails with a single latch on one side that opens up in order to wreck anything that [fol. 560] might be running away.

Q. 50. In order to pull these switches and derails, do you do that while the motor is running or is the motor stopped while you do that?

A. Well, he comes very near to a stop. It's usually just moving along slow. I jump off,—riding back on the end with my motorman, I jump off and run up and go by the motor and throw the switch and when he gets by, I throw it back.

Q. 51. You jump off, run ahead of the motor, and when he passes by, you throw it back in the original position?

A. That's true.

Q. 52. And you do that three times?

A. Yes.

Q. 53. If you fail to throw that switch, are you subject to being disciplined?

A. If any runaway happened and anybody got hurt,—if nobody got hurt, I guess I would get by with it, but if anybody got hurt, I would be long gone from my job.

By the Court:

Q. 54. Do you mean the switch that leads into your section?

A. It's a safety switch. We did have a man killed there because that wasn't done right.

Q. 55. Suppose you left it open,—is that the switch that leads down into the section?

A. Yes, sir, it's used as a safety switch.

Q. 56. It's used as a switch to let you in there?

A. Yes, sir, but it has to be left one certain way.

Q. 57. If you left it open, anybody who came behind you [fol. 561] would of necessity go in there, wouldn't they?

A. That's right. Anything that was following him would follow him right on in there.

By Senator Muse:

Q. 58. Is it true the road you take goes down grade?

A. Yes, it's really steep all the way down in there.

Q. 59. After you pass over it, are you required to throw that switch so that if any equipment following you down there, that it goes off on a track that does not have that steep grade?

A. Yes, it goes off on a track that's level instead of going down the way I have gone.

Q. 60. Where are the derails placed?

A. They are situated on down the hill at regular intervals. I don't know, I would estimate them to be—well, fifteen hundred feet apart.

Q. 61. Is that on the main track into your section?

A. That's true, yes.

Q. 62. And these derails are on that steep track, going down grade?

A. Yes, sir.

By the Court:

Q. 63. How do you spell it?

A. D-e-r-a-i-l.

Q. 64. What's the purpose and function of those things?

A. It's a safety appliance in the mines to—some times we have runaways in there on those steep grades and that is a break in the rail and it's worked on the hinge system, latch like,—just like on the railroad.

[fol. 562] Q. 65. Is it the purpose of the thing to make you stop and throw it?

A. No, the purpose is if anything is running away, to wreck that to keep it from killing somebody.

Q. 66. And to get all the way to your section, you have to throw those switches?

A. Yes, and have to close them up behind him, so if anything should be following, it would be safe.

By Senator Muse:

Q. 67. To the section where you work, it's approximately what distance, as best you could estimate?

A. It would just be a guess. I would say four miles.

Q. 68. The map measured would show the accurate distance?

A. Sure, I wouldn't argue with that.

Q. 69. In riding the motor in, are you able to sit up in the motor like you are sitting in that chair?

A. No, I have to keep my head down.

Q. 70. Is that true in the main haulage way?

A. In the main haulage way, with the exception of possibly one place, until I get down to where I get my empties, I have to keep my head down like that. There is only one place that I remember, and how come me to remember that, I rammed my head in to it one morning and it gave me quite a jar.

Q. 71. In the main haulage?

A. Yes, sir.

Q. 72. How are you able to ride after you leave the main haulage?

A. I am always riding an empty car. I wouldn't say. Always, when I go back to pull off my loads in the evening, I ride a car but the rest of the time I have an empty car ahead of the motor, maybe several of them, maybe up to nineteen or twenty and I am riding in the head-end car.

[fol. 563] Q. 73. Are you able to sit up like you are there now?

A. No, they have about that much clearance down that way.

Q. 74. Assuming that the chair is the car you are sitting on, demonstrate how you have to ride?

A. I have my feet about like this and looking this way and shining my light out over the end of the car.

Q. 75. Your pay time starts what time in the morning?

A. At eight o'clock.

Q. 76. At what point are you usually when eight o'clock arrives?

A. At the parting where I receive my empties, we call it the empty hole.

Q. 77. Is that in your section?

A. That is, it is near my section, near enough that I can get empties from that point.

Q. 78. Do you have to go to the man-trip station on your section as some of the other men have to go?

A. Not directly from the outside.

Q. 79. Well, at eight o'clock, are you usually hooking on to the empties you are going to take to the men who are working or what are you usually doing at eight o'clock?

A. I am hooking on to the empties at eight o'clock, usually hooked on at that time.

Q. 80. Now, you take off some time during the day for a luneh period, I reckon?

A. When it is most convenient.

Q. 81. You suit your convenience about that?

[fol. 564] A. Yes. I try to get the men all the cars they can load and want and I don't take it at any stated time during the day. Whenever I happen to be present where I keep my bucket.

Q. 82. Whenever you happen to get hungry?

A. I don't always get to that place when I get hungry. Sometimes I have to wait a while.

Q. 83. When three-thirty arrives, what are you doing, usually, at that time?

A. That's my quitting time. As a usual thing, I try to have my last trip of loads ready to set in the side track. Some times, I am a little late.

Q. 84. You mean you try to have your last trip of cars loaded with coal ready to set in the sidetrack?

A. That's right. I usually try to have them in there and ready to cut off at quitting time, but that varies. You have to clear the section up and the pillars.

Q. 85. You may or may not be through at three-thirty?

A. That's true.

Q. 86. What time does your pay quit?

A. At three-thirty.

Q. 87. Getting out of the mine, what process do you and your buddy use to get out of the mine back on the outside?

A. We ride the motor.

Q. 88. Do you come before the man-trip or after the man-trip usually?

A. Ahead of the man-trip nearly always.

Q. 89. From whom do you get orders permitting you to come out, the track clearance?

[fol. 565] A. The first telephone is, I would say, seven hundred feet from our load-hole where we set our loads off, and we come up there and call the dispatcher and if there is no trams coming down the grade to meet us, we get the road up as far as the dispatcher's office.

Q. 90. In traveling that seven hundred feet or approximately that distance, do you have any way of knowing whether there is anything approaching on that section?

A. We can see the entire seven hundred feet ahead of us.

Q. 91. These motors have lights on them, as I understand?

A. That's true.

Q. 92. And as you look up the tunnel or passageway for the seven hundred feet, if there is a motor coming with a light on it, you can see it?

A. That's right.

Q. 93. And you come to the nearest telephone and call the dispatcher and he gives you clearance as far as he can?

A. That's true.

Q. 94. Does he usually give you clearance all the way out immediately or tell you to come to the dispatcher's office?

A. No, it's not very usual that we get a clearance all the way outside.

Q. 95. What do you do, come to the dispatcher's office?

A. He will tell us to call him at Middle Creek, and if not there, there is another telephone at the foot of the hill and he will tell us to call him there, or pass something on the side track there.

[fol. 566] Q. 96. He gives you orders to advance as far as he can?

A. That's right.

Q. 97. Until he finally gives you clearance all the way out?

A. That's true.

Q. 98. When you get out with your motor, what do you do with it, you and your buddy?

A. We switch in as near as possible on the same bunch of tracks that we got it off of that morning,—not always the same track but always in that same bunch, off the main line.

Q. 99. Then what do you do?

A. Go to the lamp house and put my lamp there.

Q. 100. Who turns in the oil can?

A. My Buddy. He has a locker.

Q. 101. Generally speaking, you go into the mines at what time in the morning?

A. Some times a little before seven o'clock and some times as much as fifteen to twenty minutes after seven. It varies.

Q. 102. What time do you get out of the mine?

A. About four-thirty, I believe, would be about the average time. Of course, that varies, too.

Q. 103. And you are paid from eight to three-thirty, with thirty minutes off for lunch?

A. That's right, unless I should be required to stay as much as forty minutes or an hour over time, by getting right on the section foreman, I can get some over time pay out of that.

[fol. 567] Q. 104. During the thirty to forty-five minutes when you get overtime, are you required to do anything?

A. Yes, he don't let us—there's not any call for us to stay at work unless we have to clean up the loads to clear the way for the cutting machine, or loads we couldn't get off before quitting time, on the pillars.

Q. 105. Is it true that there would be overtime actually pulling loaded cars out?

A. Yes.

Q. 106. Are you paid anything for going from the portal of the mine to your working place and from your working place back to the portal of the mine?

A. No, I am not paid anything for that.

Q. 107. During the period from April 1st, these mines were working six days a week?

A. Yes.

Q. 108. And since then?

A. Yes, sir.

Q. 109. Have you been working usually the full six days a week? Some weeks you probably wouldn't, but generally, do you work every day?

A. I consider that I have been off one day with sickness during that time and about three days for the Local Union, business for the Local Union.

Q. 110. Otherwise, you have worked every day?

A. That's right.

Q. 111. Mr. Ketron, how do you brake those trips? Suppose you have got some loaded cars you are handling, for [fol. 568] instance, what is the method of braking, keeping these cars from running away?

A. We don't have any brakes on them. They use a slide or sled, a thing they put on the rail in under the loaded cars,—of course, we don't use any of them on our section, we pull all our loads uphill and take the empties down, but when they bring loads down, they have a long sled that goes under both wheels.

Q. 112. Is that a long steel piece?

A. It is an angle bar that fits on the rail.

Q. 113. Very sharp on one end?

A. Yes, so the wheel will take and run up on the sled and it has a lug on the other end.

Q. 114. You put this steel piece between the wheel and the track and it slides on it like a sled?

A. That's right.

Q. 115. On the main haulage particularly do these trams get out of control, these trams hauling cars, do they get out of control from time to time?

A. Yes. We have a run away of loads. We had a run away a few days ago that tore up a bunch of cars.

Q. 116. Was it a run away of loaded cars?

A. That's right.

Q. 117. That took place in what portion of the mine?

A. It run away from the top of the hill at Jones Fork on that strip of track to the curve at the foot of Bulldog, as we call it. It's an extra steep part of a steep grade.

Q. 118. Did any one get hurt?

[fol. 569] A. No, there wasn't any one hurt, I don't believe, in that run away.

Q. 119. In going in and coming out, do you run into the danger of a portion of the roof falling on you?

A. Yes, there is loose rock at places all the way in. Some of it has had drill holes put in it, and it hasn't been taken down yet. I don't know whether they had it drilled and then changed their minds about it being dangerous or not.

Q. 120. At various places over the portion of the mine that you work in, state whether or not there are places in which they have chalked on the roof "Bad Roof" or some expression that means the same thing?

A. Yes, there is places along the main line that has a cross-mark on it with chalk and as a usual thing, the fore-

man that makes that chalk mark marks his initial after it.

Q. 121. What does that mean?

A. On anything in the mine, it means it is a dangerous condition.

Q. 122. After these cross marks are placed on the roof or wherever they are placed, is that rock removed immediately or does that cross-mark stay there some times for days and weeks?

A. No. I have known them to stay for months after they had been cross-marked and not be taken down.

Q. 123. Is that anything unusual or is that a more or less frequent occurrence up in the Jewell Ridge Mine?

A. In all sections that I have been on, I would say that in almost every entry there is chalk marked top, where they made the crosses on it, the bad top sign.

[fol. 570] Q. 124. After they have been chalked, does the rock some times fall down of itself before it is ever removed?

A. Yes, I have known it to do that.

Q. 125. More than once or occasionally?

A. Yes, I have known it to happen more than once in my mining experience.

Q. 126. Do you know of anybody who has been hurt on those man-trips, for instance?

A. Well, I seldom ride a man-trip. I haven't been on any of the man-trips where there was anybody hurt but I had heard before these other gentlemen testified and Mr. Hagy about most of the accidents they named. I don't know anything different from what they know. I know of those accidents.

Q. 127. Do you know anything about one of the load-trips getting away some eight months ago and killing a man? Do you know anything about it? I don't know whether you do or not.

A. It seems to me like it was much longer than eight months ago that I knowed of a man getting killed on a runaway trip, William Murphy. I would say that it was a little over a year ago that William Murphy was killed.

Q. 128. How was he killed?

A. It was the grade I was talking about these two derails and this safety switch being on. He was a drill man and the way I heard, he was traveling—he had come from the Parallel Section and was going to the First North Section to drill in First North and he passed this safety switch

and failed to throw it back and the tram had just pulled up out of First North with a trip of loads and pulled over far [fol. 571] enough for him to go down ahead of it and he was supposed to throw this safety switch back there and the brakeman on the tram trip was at the derail there that had a bad latch on it, and this brakeman informed me that he was watching this latch at this switch sixty to eighty feet from this safety switch, that goes back into this empty chute, side track, and William Murphy left this safety switch thrown the way he had went and when the motorman started back in there, he didn't know that his trip was ahead of him, he had pulled it up out of there, and he didn't know the trip was following Murphy until it was too late to check it, he tried to check it, the mortorman did, I believe his name was Alex Rimmer, and it followed Murphy and overtook him on this mountain, they only had one derail, they put the second one in after the accident, and it caught Murphy down on the hill and he was using the motor I work on in the day——

By Mr. Stuart: I don't like to interrupt, Your Honor, but this sounds wholly irrelevant, in as much as it is hearsay.

By the Court: It is certainly subject to the objection of hearsay. Now that you make it, I sustain it.

Q. 129. I notice you have lost some of your fingers on your right hand. How did you lose those,—in a mine accident?

A. Yes, I was braking at the time.

Q. 130. At Jewell Ridge?

A. I reached—yes, it was January 16, 1936, when I got those fingers mashed, and had to have them taken off.

Q. 131. And they were lost while you were braking over there?

A. That's right. I am getting the cap-board we use to scotch the cars with off the rail and the cars run over my hand.

[fol. 572] Q. 132. These sleds that you put under the rail and between the rails, are they put in while the car is standing still or moving?

A. Well, I don't know.

Q. 133. How do you put them in?

A. What few I have put under, they had to have them standing still. I have heard the other fellows say they put

them under while they were running but I don't see how they could. I would get killed trying it.

By Mr. Stuart: If Your Honor please, we have a standing objection, I believe, as to evidence of hazards and accidents in the mines?

By the Court: That is true and it is so considered to the extent of all such testimony.

By Mr. Stuart: I believe we also have it understood that in cross-examining or offering rebuttal testimony, we are not waiving our objection on that ground.

By the Court: It may be so considered. I don't know that you have made the point before, but it may be so considered.

Cross-examination.

By Mr. Stuart:

Q. 1. Mr. Ketron, the marking of the rocks in the top that you have mentioned, who does that?

A. Well, any one who may find a dangerous piece of rock may mark it, and report it to the mine foreman.

Q. 2. Anybody who goes along, if he thinks there is a dangerous place, he may mark it with chalk?

A. That's true, and he should—is supposed to go to the [fol. 573] mine foreman and report it.

Q. 3. Then the mine foreman comes and inspects it and decides whether it is dangerous, in his judgment, or not, doesn't he?

A. Well, I would have to guess at that. I wouldn't know for sure.

Q. 4. Then there is a crew they call the "scale crew" that comes along periodically and makes a detailed inspection of all the top and takes down anything they consider dangerous, isn't there?

A. I don't know whether we have any crew like that at —once in a while, when the mine is down idle for a few days, they will take some men in and do—before the mine is fixing to start back up, and do some straightening up around to get ready. That's about all I know about that.

Q. 5. Do you know Carl Shelton?

A. Yes, I know him.

Q. 6. Isn't he in charge of the scale crew?

A. Well, he is on the night shift. I didn't know that that was his line of work. I thought he was supply boss. That's what I thought his job was, but I don't know. I am a day shift man.

Q. 7. You didn't know they had the scale crew who went through the mine at night and took down these rocks where the foreman considered it was dangerous?

A. If they have one, I didn't know they had a regular crew for that.

Q. 8. You never heard of the scale crew?

[fol. 574] A. Well, I guess that would be the same term as the "rock crew" possibly. Nearly all mines have a rock crew.

Q. 9. Does your motor some times tail a man-trip, either going in or coming out?

A. What period—pardon me, please, but what period do you take into consideration, all the time during the past year up to the present time?

Q. 10. Well, what we are talking about is the time before the Government took possession on November 1st, the first day of this month.

A. Well, the empty situation become awful bad, we had a slate dump broke down, I believe, was the reason for it, and they put the section that I work on to work an hour earlier in the morning for about three weeks prior to the Government's taking over the mines this last time.

Q. 11. I don't want to know about any exceptional situation, just in general.

A. Well, outside of that three weeks, I recall from April 1st up to that exceptional situation my motor—the motor my buddy was driving tailing the man trip one time.

Q. 12. Well, you didn't do it much then; it was a rare thing with you?

A. No, no, I just——

Q. 13. Now, going back of April 1st, did your crew tail the man-trip on occasions before then?

A. Well, before I went to the First North Section, I worked for about a year, possibly a year, in second north, and we had one motor down there a while, and my buddy, [fol. 575] Hooker, and I pulled the man-trip,—that's been over a year ago, for a short time, until they put two motors back in there.

Q. 14. You have had some experience, though, in your motor tailing the man-trip, have you?

A. Yes.

Q. 15. Well, what I want to get at is what the usual practice has been where that's the case. Now, when that happens, your buddy, the motorman, gets paid, does he not, in the way that Mr. Bartley described?

A. Yes, Mr. Bartley's statement on that was accurate I think.

Q. 16. Now, as to the brakeman, as to you, do you get any pay for tailing the man-trip?

A. Well, no, the brakeman is not supposed to get any pay. Rather, according to the management,—we took that up with the mine foreman once and asked him about it, and he said he wasn't paying no two brakemen on no one trip. That's using his words without the profanity.

Q. 17. But the brakeman, when his motor is tailing the man-trip, doesn't have anything to do, does he? He is just riding in the same as before and his buddy, the motorman, is the man who really does the braking for that man-trip,—it's the motorman who throws the switches, isn't it, for the man-trip?

A. Yes, he leaves his motor, and it still running, and jumps off and throws the switch and runs and catches his motor.

Q. 18. But the brakeman of a tailing motor doesn't have to do anything like that, does he?

A. That's true.

[fol. 576] Q. 19. It's always been the practice for the motorman of the tailing motor to get paid and the brakeman not to get paid?

A. No, not always. There was a time when the brakeman did get paid.

Q. 20. How long ago was that?

A. It's been about three years since they paid a brakeman on the motor that was on both ends of the trip.

Q. 21. Did they pay the brakeman and the motorman both on the tailing motor?

A. They did at that time.

Q. 22. Do you know what the brakeman did at that time to get paid for?

A. He rode the trip and there isn't very much to do in the way of hard work on a man-trip for the brakeman, but

anything that come up that required his services; a wreck in the trip or switch to be thrown or laying back behind the trip, he did that work.

Q. 23. So at that time, he was doing some work in connection with the man-trip and did get paid?

A. That's right, and the management apparently decided the work was not hard enough for him to get pay for and took him off that and let the motorman do both jobs.

Q. 24. Now, Mr. Ketron, speaking of your quitting time, I understood you to say that your day ends at three-thirty there on your section?

A. That's my specified quitting time. I am supposed to be done and wound up at that time for my seven hours.

Q. 25. And I believe you said if you got through a few [fol. 577] minutes early or a few minutes late, that three-thirty was still considered your quitting time?

A. I was never—on the section I am on now, I don't remember ever being fortunate enough to get done early. The men would load as long as they had time to load a car at all and it would throw me right at quitting time or a little after always, some times as much as an hour late.

Q. 26. Well, when you run into any appreciable amount of time past your quitting time, you get paid for it, don't you?

A. Yes, if I take it up with the foreman and demand it.

Redirect examination.

By Senator Muse:

Q. 1. It is not quite clear to me, your statement that on the man-trips the motorman does certain brakeman's work or work ordinarily done by the brakeman. Will you explain that to me?

A. Well, going in, on these safety switches and derails, the man-trip has to pass over that same road, and in going down this grade, these switches necessarily have to be thrown back behind the man-trip, and the motorman has to jump off and throw the switches and then catch his motor on the fly.

Q. 2. What do you mean by "on the fly"?

A. The man in front might be pulling him pretty keen.

Q. 3. Is that done by the motorman on the front or the tailing motor?

A. On the tailing motor.

Q. 4. After the man-trip passes over and keeps moving?
A. That's right.
Q. 5. Do I understand the motorman on the tailing motor [fol. 578] jumps off the moving man trip and throws his switches or whatever he has to do and runs and catches the motor and gets back on?
A. That's true.
Q. 6. And that work you have described is done by the motorman on the tailing motor?
A. That's true.
Q. 7. And this man-trip is moving during all that time while the motorman is doing that?
A. Yes, the man-trip is moving during all that time.

Witness stands aside.

STEWART OSBORNE, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. I believe you are Mr. Stewart Osborn?
A. Yes, sir.
Q. 2. Talk loud enough for all of us to hear you without having to strain ourselves too much. You are employed by the Jewell Ridge Coal Corporation?
A. Yes, sir.
Q. 3. In what capacity?
A. I am a brattice man.
Q. 4. You are a brattice man?
A. Yes, sir.
Q. 5. What does a brattice man do? Give us some idea [fol. 579] of the type of your work.
A. The brattice man builds the stoppings on these breakthroughs where the coal has been taken out, to let the air go on up into the last breakthrough.
Q. 6. In order to regulate the flow of the air?
A. Yes, sir.
Q. 7. These brattices, what kind of material are they built out of?
A. Built out of wood and cinder block.

Q. 8. You build them either out of wood or cinder block?

A. Yes, sir.

Q. 9. What time of morning do you get to the lamp house?

A. Usually around six-thirty or six forty-five.

Q. 10. You get your lamp in the same way these other men have described; is that correct?

A. I do.

Q. 11. In your line of work, name the tools that you use in performing your duties? Have you made a memorandum of them?

A. I have. I use a hand-saw, brace and bit, hatchet, trowel, square, two wrenches, two different size wrenches, and pliers.

Q. 12. How about nails?

A. Yes, but they wouldn't be considered a tool.

Q. 13. You do use nails, though?

A. Yes, sir.

Q. 14. All right, Mr. Osborn, after you get your lamp in the morning, what's the next thing you do usually?

A. It depends. If I have materials to take in with me, [fol. 580] I go get those and carry them over to the portal.

Q. 15. What kind of material do you take in from the outside?

A. I take in cement.

Q. 16. That comes in bags?

A. Yes, sir.

Q. 17. How much do those bags weigh, approximately?

A. I wouldn't be sure, but I think they are ninety-five pounds.

Q. 18. What other material do you take in?

A. I also take in plaster.

Q. 19. That comes in bags?

A. It does.

Q. 20. How much do those bags weigh, approximately?

A. I am not sure. They may weigh a hundred pounds. I am not sure.

Q. 21. What other material do you take in?

A. I take in hinges for my trapdoors.

Q. 22. You get those where?

A. At the blacksmith shop.

Q. 23. How about the cement and plaster, where do you get that?

A. Usually from the motor-barn.

Q. 24. Do you have to have an order to get it?
A. No, the plaster and cement, I do not.
Q. 25. How about the hinges?
A. No order.
Q. 26. You said something about nails a few moments ago. [fol. 581] Do you take in nails every day?
A. Practically every morning, yes, sir.
Q. 27. Where do you get those?
A. At the mine foreman's office.
Q. 28. Do you have to have an order to get those?
A. I report to the mine foreman when the keg is running empty and he gives an order to the supply house and has them brought over, they are brought over at night.
Q. 29. So long as they are there, you get what you want?
A. By his permission.
Q. 30. How many nails do you take in daily?
A. Four or five pounds probably.
Q. 31. Is there any other material that you take in, that you remember?
A. Yes, I have to have bolts for those door hinges.
Q. 32. Where do you get the bolts?
A. I usually get them from the man in the lamp house.
Q. 33. Do you have to have an order to get them?
A. I do.
Q. 34. Where do you get the order?
A. The mine foreman some times gives me an order and some times Mr. Hagy gives me an order.
Q. 35. Is there anything else you take in?
A. I some times take in brattice cloth.
Q. 36. Is that heavy cloth that you use to close these openings?
A. Yes, sir.
Q. 37. Where do you get that?
[fol. 582] A. It is kept in the supply house.
Q. 38. Do you have to have an order for that?
A. I get an order for it in the evening, and it is usually set out in the evening or at night so I can get it the next morning.
Q. 39. Is there anything else you take in?
A. I have on an occasion or two taken in water and sand from the outside.
Q. 40. This brattice cloth, how much will that weigh, the amount you take in on one trip?

A. I take in a roll at a time. I wouldn't know just what it would weigh.

Q. 41. Give me your best estimate of it?

A. Between sixty and one hundred pounds some where.

Q. 42. How do you get the material into the mine that you are taking in? Suppose you had a bag of cement to go in tomorrow morning, how would you get it in the mine?

A. I would put it in the tool car on the man-trip.

Q. 43. How far do you have to carry it from where you get it to the man-trip tool car?

A. I suppose about one hundred and fifty feet.

Q. 44. Take that brattice cloth, do you have to carry that, too?

A. Yes, sir.

Q. 45. How far do you have to carry that?

A. It's usually left at night in the mine foreman's office, —a short distance,—fifty feet, probably.

Q. 46. How about the plaster and cement, how far do you [fol. 583] carry that?

A. I would say two hundred and fifty feet.

Q. 47. Suppose you had some of that material, some cement to go in in the morning, in what car would you carry that cement in?

A. I always put it in the tool car.

Q. 48. In the tool car for your section?

A. Yes, sir.

Q. 49. What section do you work in, Mr. Osborn?

A. Parallel Mains.

Q. 50. Is that the section you have been working in for some time?

A. Yes, sir.

Q. 51. How long have you been working in that section?

A. For a year or more.

Q. 52. And most of the work you do as brattice man is in Parallel Mains?

A. Yes, sir.

Q. 53. You ride the same man-trip that the other witnesses have referred to?

A. Yes, sir.

Q. 54. You get into the mine the same way they get there?

A. That's right.

Q. 55. At what point in your section do you get off and take your equipment off?

A. At the man-station.

Q. 56. Do you check in at the man-station?

A. No. I don't use a metal check but I leave my tools [fol. 584] at the man-station of an evening and take them out from there in the morning.

Q. 57. You pick up at the man-station the tools you have left there the evening before?

A. That's right.

Q. 58. Being most of the tools you have listed here?

A. Correct.

Q. 59. Do you work mostly over that section, Parallel Mains, in making these brattices?

A. I do.

Q. 60. How do you get your tools and equipment from the man-station to the particular section where you are working?

A. I carry my tools with me.

Q. 61. How far do you have to walk from the man-station to the place you work?

A. It would depend on what one of those entries I worked on. I work all the way from Eight Right plumb on in to Indian Creek.

Q. 62. In your judgment, the greatest distance would be what?

A. Fifteen or sixteen hundred feet.

Q. 63. How do you get the material over to the place you are working in?

A. The motorman brings the cement or lumber that I have.

Q. 64. How about the nails?

A. The nails I carry with me.

Q. 65. Hinges, too?

[fol. 585] A. No, sir, the motorman brings those.

Q. 66. You carry your tools and nails?

A. Yes, sir.

Q. You take off no more than thirty minutes for lunch some time during the day?

A. That's right.

Q. 68. When eight o'clock comes, whereabouts are you, usually?

A. Usually at the man-station.

Q. 69. And when three-thirty comes, that's your quitting time, I believe, were are you usually?

A. Well, I am usually on my way to the man-station to catch the man-trip at three-thirty.

Q. 70. You quit at approximately three-thirty?

A. Yes, sir, approximately.

Q. 71. And start back towards the man-station to catch the man-trip out?

A. That's right.

Q. 72. And you usually leave the man-station around eight o'clock in the morning?

A. Yes, sir.

Q. 73. I believe you say when you get to the man-station on your way out, you leave your tools there until the next morning?

A. That's right.

Q. 74. Suppose you have to have some tools sharpened or repaired, do you bring them outside, or what?

A. I some times do.

Q. 75. So far as sharpening your saw and so forth, I take [fol. 586] it you do that yourself?

A. Yes, sir.

Q. 76. Do you come back out of the mine on a man-trip?

A. Yes, sir.

Q. 77. The same way these other witnesses have described?

A. I do.

Q. 78. Under the same conditions?

A. Yes, sir.

Q. 79. You usually enter the mine at seven o'clock or shortly thereafter; is that correct?

A. Yes, sir, around seven o'clock.

Q. 80. And get back out at what time?

A. Oh, any where between four-thirty and five o'clock.

Q. 81. Just as these other men?

A. Yes, sir.

Q. 82. And your pay time is--seven hours a day, is it?

A. Yes, sir.

Q. 83. From eight to three-thirty with thirty minutes off for lunch?

A. Yes, sir.

Q. 84. When you leave your man-strip station in your particular section, which is Parallel Main, and walk to wherever you are working, whatever the distance may be,

are you able, in that section, to walk erect or do you have to stoop over?

A. On those main entries, you can walk standing up straight.

Q. 85. How about when you reach the cross-entries?

A. Those cross-entries are high enough that you can [fol. 587] walk standing straight, but in the breakthroughs where I work, you can't stand straight.

Q. 86. While you are walking to the breakthroughs and leave the cross-entries, what distance will that be usually, in your judgment?

A. Just a short distance.

Q. 87. Can you give us some idea?

A. The breakthroughs are cut from one entry to another, just a short distance.

Q. 88. Do you walk on the track or on the side of the track?

A. On the track, usually.

Q. 89. What is the condition of that track, is it smooth or rough with coal and rock?

A. It has rock and coal and stuff scattered in it.

Q. 90. Just about like these other witnesses have described?

A. Correct.

Q. 91. Is the walking condition you have, walking back and forth to the man-station very similar to the conditions the other men have described that they encounter as they walk back and forth?

A. Yes, sir.

Q. 92. You stated that you gave certain orders to the boss at the end of your shift, I believe, Mr. Osborn; is that correct?

A. If I need material, I do. I tell him about it at the end of the shift.

Q. 93. Which is that, the section boss or the mine foreman?

A. The section boss, and occasionally the mine foreman.

Q. 94. But it would generally be your section foreman? [fol. 588] A. Yes, sir.

Q. 95. You said something about lumber. Where do you get the lumber? Is that brought to you or do you go get it?

A. The lumber is brought on the section at night.

Q. 96. Is that lumber brought to the point you are going to work or do you have to carry it?

A. It is scattered some where along the section.

Q. 97. How do you get it?

A. The gathering motor brings it to me.

Q. 98. Do you come to the mine in the morning and leave in the afternoon by automobile or truck or how do you get there?

A. I walk.

Q. 99. Mr. Osborne, in the section you work in, are you bothered with bad odors, disagreeable odors?

A. Yes, sir.

Q. 100. Is it sufficient to be obnoxious?

A. It is.

Q. 101. Have you got any gnats in where you work?

A. Yes, sir.

Q. 102. The mines, it is conceded, were working six days a week from April 1st to June 20th, and since then for that matter. Have you, generally speaking, been working the entire six days a week?

A. Well, not at all times.

Q. 103. Have you in some weeks?

A. Yes, sir.

Q. 104. Do you generally work the six days?

A. Yes, sir, when I am there, and not going home, I do.

[fol. 589] Q. 105. Did you work six days in some of the weeks between April 1st and June 20th?

A. Yes, sir.

By Mr. Stuart: I believe we have a standing objection to the odors and gnats?

By the Court: You have.

Cross-examination.

By Mr. Stuart:

Q. 1. These odors and these gnats that you mention, Mr. Osborne, don't affect you while you are riding a man-trip, do they?

A. No, not so bad on the man-trip.

Q. 2. When you say they are not so bad, you mean they are not there at all, don't you?

A. No, you won't notice them on the man-trips.

Q. 3. About your supplies, you spoke of bags of cement weighing ninety-five pounds, bags of plaster weighing one

hundred pounds and brattice cloth weighing sixty to one hundred pounds a roll. Those supplies are ordinarily taken in for you without your having to do anything about it except tell the general mine foreman the night before that you need them, aren't they?

A. No, sir.

Q. 4. Well, if you do tell him, he will send them in for you, won't he, if you tell him the night before?

A. He hasn't yet.

Q. 5. Have you asked the day before to have heavy supplies of this kind sent in for you and been refused?

[fol. 590] A. No, I haven't.

Q. 6. You have never been refused. It is a fact, as I understand you, that when these supplies are unloaded at the man-station, they are taken to the particular point where you are going to need them by the gathering motor?

A. That's right.

Q. 7. And the only carrying you ever do, when you do it, is to get them into the tool car?

A. That's right.

Q. 8. Your own tools are kept on the section, as I understand?

A. Yes, sir.

Q. 9. Your place of work is all over your section?

A. That's right.

Q. 10. Wherever there is some particular work for you to do on the section, you go there and do it?

A. That's right.

Re-direct examination.

By Senator Muse:

Q. 1. How long have you been a brattice man?

A. You mean for Jewell Ridge?

Q. 2. Yes.

A. I came there in June, 1942.

Q. 3. Since you have been there, has it been customary for the brattice man to get his own supplies?

A. It has. That is, cement and plaster and things of that kind.

Q. 4. The things you have mentioned here?

[fol. 591] A. Yes, sir.

Witness stands aside.

C. F. Smith, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. C. F. Smith?

A. Yes, sir.

Q. 2. Mr. Smith, I believe you are what is known as a track man at the No. 1 Mine?

A. Yes, sir.

Q. 3. You have been working in that capacity for the Jewell Ridge Company how many years, approximately?

A. Approximately ten years.

Q. 4. You have been working around mines for approximately how many years?

A. Approximately thirty or thirty-one years.

Q. 5. How old are you, Mr. Smith?

A. Forty-two, almost forty-three.

Q. 6. You were how old when you went into the mines?

A. Between eleven and twelve years of age, I believe.

Q. 7. And have been following it ever since?

A. Yes, sir.

Q. 8. I take it the track man has charge of the track; is that correct?

A. That's correct.

Q. 9. As a track man, what time do you reach the lamp-[fol. 592] house in the morning?

A. Well, that varies. On most occasions, I would say fifteen or twenty minutes till seven.

Q. 10. You get your lamp in the same manner these other gentlemen get theirs?

A. Yes, sir.

Q. 1. As a trackman, what tools do you use?

A. We use a track adz, known as an adz, and a wrench and a spike-bar and rail bender and a ratchet to make holes in the rails,—this ratchet also includes what is known to us miners,—I never did know the real name for it, we call it a grandad, an old man that is fast ned to this ratchet.

Q. 12. Is that fastened on to the track?

A. Yes, sir.

Q. 13. What else,—do you use any drills?

A. We use what is known as a punch and a long bar that goes with this——

Q. 14. I believe you mentioned wrenches?
A. I believe I did. We use a wrench.
Q. 15. Do you use any drill bits?
A. Yes, sir.
Q. 16. How many of those do you usually use?
A. Well, that varies. Some times we have one or more of the drill bits.
Q. 17. This ratchet that you talked about, how much would that weigh, approximately? Just your best estimate on it.
A. The ratchet alone, I would say, would weigh from ten to twelve pounds, maybe more or maybe less.
[fol. 593] Q. 18. What about the grandad you spoke of?
A. Something near the same weight.
Q. 19. In other words, that combination would weigh something near twenty pounds?
A. Yes, something near that.
Q. 20. Do you have a track gauge?
A. Yes, we have a track gauge.
Q. 21. I don't believe you mentioned that?
A. I did not.
Q. 22. Where do you keep those tools that you use?
A. As a general rule, I keep them on the section where I perform my work.
Q. 23. What section do you work on?
A. Parallel and Indian Creek sections.
Q. 24. And generally speaking, you keep the tools in the section where you are working?
A. Yes, sir.
Q. 25. Do you keep any tools on the outside?
A. Not unless I bring them out for repair.
Q. 26. Do you do that occasionally?
A. Yes, sir.
Q. 27. How often would you say that is necessary?
A. Well, I would say that some times it may—well, I would say it this way, that it will average once or twice a month that I have to bring some part of the tools out to be repaired.
Q. 28. What materials do you use, as distinguished from tools?
A. I use track bolts and nuts, of course.
[fol. 594] Q. 29. Those bolts, do they come in kegs?
A. Yes, sir.

Q. 30. They will weigh approximately what?

A. I have never weighed one, but I am pretty sure they weigh two hundred pounds to the barrel.

Q. 31. Where do you get those bolts?

A. We get them at the supply house.

Q. 32. Do you have to have an order to get them?

A. I give an order to the section foreman in the evening when I quit work for the amount I may need.

Q. 33. And he turns in the order so you can get the supplies the next morning?

A. Yes, sir.

Q. 34. Do you use spikes also?

A. Yes, sir.

Q. 35. Do they come in kegs?

A. Approximately the same kind of container.

Q. 36. And approximately the same weight?

A. Yes, sir.

Q. 37. How about angle bars, do you use those?

A. Yes, sir.

Q. 38. How many of those do you take in every morning?

A. We don't take them in every morning.

Q. 39. How often do you take them in?

A. I would say once or twice a month.

Q. 40. How many do you take in?

A. Naturally, that would vary. It has always been the practice of a track man to take all the supplies he can get [fol. 595] and some times we will have ten pair and some times we will have fifty pair.

Q. 41. It depends on how many you can get?

A. Yes, sir.

Q. 42. Where do you get them, Mr. Smith?

A. At either the machine shop or the supply house. I suppose it would be called the supply house. The general supply house is at the lamp house they speak of and they have another storage house up in the hollow and that's where we usually get these spikes and bolts.

Q. 43. In your work, do you use occasionally, steel ties?

A. Yes, sir.

Q. 44. They come in bundles of five, I believe?

A. Yes, sir.

Q. 45. And weigh approximately how much?

A. I would say approximately forty to fifty pounds to the bundle.

Q. 46. Do you get those at the supply house also?

A. No, sir, we don't get those at the supply house.

Q. 47. Would you mind telling me where you do get them?

A. Well, that will vary. If the ties are new and haven't been used, I get them at a designated spot back from the portal, I will say, about a quarter of a mile, and as a rule, we get part of our ties where they have been in use and brought to the blacksmith shop for repair, and we take those back in the mine.

Q. 48. If you get ties that have been repaired, you get them from the blacksmith shop?

A. That's true.

[fol. 596] Q. 49. How far is that from where you get on the man-trip?

A. That varies. It depends on where your particular man-trip has been spaced.

Q. 50. About how far?

A. About a hundred and fifty feet.

Q. 51. If you get new ties, you say you get them about a quarter of a mile from the portal?

A. That's true.

Q. 52. How do you get them to the portal where you catch the man-trip.

A. There is a double track there, a side track there, and these ties, all I have ever gotten, I don't know, they are straight across these two tracks, and we get them and carry them across the tracks and put them in the tool car.

Q. 53. You don't have to carry them very far?

A. No, sir.

Q. 54. But you do put them in the tool car?

A. That's true.

Q. 55. Suppose you are taking in a barrel of spikes or bolts, how do you get that keg of bolts or spikes to the man-trip?

A. Well, on occasions, I borrow a wheelbarrow off the sand man, and on other occasions when I can't get it, I roll them along on the ground.

Q. 56. You have to arrange to get them from the place you get the kegs up to the man-trip?

A. That's true.

Q. 57. That's a distance of about what number of feet?

[fol. 597] A. Well, from two hundred and fifty to two hundred and seventy-five feet, I would say. I am not sure about the distance.

Q. 58. You catch the man-trip in in the same way these other witnesses have described?

A. Yes, sir.

Q. 59. And you have the same experiences they have described?

A. Yes, sir.

Q. 60. You carry your tools and equipment, and if there is anything you have to take in, you carry it on the tool car?

A. That's true.

Q. 61. Do you have something to go in practically every day or not?

A. No, sir, not every day.

Q. 62. About how frequently will you have something going in, on an average?

A. On an average, I would say about two or three times a month.

Q. 63. Do you go to the man-station in your section?

A. Yes, sir, I go to the man-station or powder house, whatever you might call it.

Q. 64. In some sections, I believe they are the same and in other sections, I believe they are different?

A. They are the same at my particular section.

Q. 65. When the man-trip reaches your station, you get off and take off your supplies?

A. Yes, sir, if I have any supplies to take off, I take [fol. 598] those off.

Q. 66. What time do you leave your man-station inside to go to work?

A. Well, I leave this man-station just as soon as I arrive there and then I walk about six hundred feet to where I leave my excessive clothes that I don't use in working and my lunch.

Q. 67. I believe you pick up your tools that you have left at the man-station the night before?

A. I don't leave my tools at the man-station.

Q. 68. Would you mind telling us where you leave them?

A. I leave them the nearest to where I think I will start my duties the next shift.

Q. 69. So you don't wait at the man-station until eight o'clock, you leave at whatever time you arrive?

A. I leave the man-trip at whatever time I arrive and go to this other destination where I leave my coats and lunch, and wait until eight o'clock.

Q. 70. The point where you leave your lunch and excess clothing, will that distance vary from the man station?

A. No, sir, it's the same place.

Q. 71. The point where you leave your lunch and excess clothes, will that distance vary from the man-station?

A. No, sir, it's the same place.

Q. 72. How far is that from the man-station?

A. I would say about six hundred feet.

Q. 73. In walking that distance from your section, do you walk up erect or bent over?

A. There is a portion of that six hundred feet I can walk [fol. 599] erect and some places I have to stoop.

Q. 74. Do you have to stoop very low?

A. A slight stoop on that particular stretch.

Q. 75. At that point where you leave the excess clothes and lunch, you wait there until eight o'clock.

A. That's true in most cases.

Q. 76. When eight o'clock arrives, what do you do?

A. I start to my designated work.

Q. 77. Wherever it happens to be in that section?

A. Yes, sir.

Q. 78. How long do you have to wait before eight o'clock at the place where you leave your clothes and bucket?

A. I would say five to ten minutes. It varies, depending on when the man-trip arrives.

Q. 79. Some times you don't have to wait at all?

A. Yes, sir.

Q. 80. And at other times, you wait longer?

A. Yes, sir.

Q. 81. You eat your lunch about the way the other men have described?

A. When it's most convenient.

Q. 82. You quit at three-thirty?

A. Yes, sir.

Q. 83. Quit work at three-thirty or are you back at the man-station at three-thirty?

A. I quit work at three-thirty. Some times I will work a few minutes over time if I have something to do to keep from knocking the other fellow off on the next shift.

[fol. 600] Q. 84. When your work is over, you go up and pick up your bucket and clothes?

A. Yes, sir.

Q. 85. And walk to the man-station?

A. That's correct.

Q. 86. These supplies you may take in and take off at the man-station, how do you get those over to the point where you are going to use them?

A. If it is heavy material, I have the gathering motor pick them up and take them to the spots where I can get them and if it is light material, I carry those.

Q. 87. What kind of material would you carry?

A. Such as five pair of these angle bars or something like that.

Q. 88. A quantity you could carry without too much trouble; is that the idea?

A. Yes, what I might need before the gathering motor could get the supplies to me. I take on some things I might need before he could get them to me.

Q. 89. Then when the day's work is over, you catch the man trip and come out about like these other men do?

A. Yes, sir.

Q. 90. In fact, you come out on the same trip, don't you?

A. That's true.

Q. 91. From the point where you get off at the man-station on your section to the point where you leave your excess clothes, do you walk in the track or on the side of the track?

A. That will depend on the entry. Of course, a part of [fol. 601] the time I walk inside and part of the time over on the side.

Q. 92. What will determine that?

A. There may be slate falls along the side and in that case, I will walk in the center of the track, and if the side is cleared up, I will walk there.

Q. 93. Do you have many slate falls?

A. Oh, yes, we have a lot of slate falls.

Q. 94. Do you know of any one who has been hurt on the man trip who hasn't been named, any new, additional ones, or do you just know about the ones who have already been named?

A. I believe it has already been mentioned where the man-trip run into the rear end of a tram trip.

Q. 95. Yes, that was mentioned.

A. I don't have any new ones to call.

Q. 96. When you are walking this distance from the man-trip down to where you leave your clothes, do you have to get off to the side to let motors pass from time to time?

A. Oh, yes.

Q. 97. Do you always have sufficient clearance to stand by the side of the track or do you have to get to a place of safety?

A. We have to get to a place of safety in parts and other places it is clear.

Q. 98. Where it is too narrow, you go to a place you think is wide enough?

A. That's correct.

Q. 99. Do you walk or ride a bus or automobile to Jewell Ridge?

A. I ride in a private automobile.

[fol. 602] Q. 100. With some one?

A. With my brother, yes, sir.

Q. 101. You have heard me ask this question of the other witnesses. The mines were working six days a week and still are, from April 1st to June 20th. Did you work the six days a week?

A. In some cases I did and some, I did not.

Q. 102. Did you usually work the six days?

A. If the work was furnished me, I worked six days, yes, sir.

Q. 103. Was it furnished you some of that time from April 1st to June 20th?

A. I wouldn't say it was from April 1st to June 20th, but there was some of the time in the past year that I was not furnished the six days a week. I would go out to work and the work wouldn't be furnished me, and I would go back home.

Q. 104. Did you work almost every day you had work?

A. Yes, sir.

Q. 105. Did you work at least five days a week during most of that time?

A. Yes, sir.

Q. 106. And some of it you worked six days, you think?

A. Yes, sir.

Cross-examination.

By Mr. Stuart:

Q. 1. You didn't work during the strikes, I suppose, did you, Mr. Smith?

A. Well, I didn't work when the mines were not running, no.

[fol. 603] Q. 2. They were not running while the strikes were going on, were they?

A. I didn't know we had had any strikes.

Q. 3. You just know the mines weren't working some of the time?

A. I knew we had work stoppages, waiting for a contract.

Q. 4. A work stoppage isn't a strike?

A. No, sir.

By the Court: What is the significance of that?

By Senator Muse: We really don't think it is under the pre-trial order. You have to go beyond the forty hours before the Wage and Hour Division takes any part in it. In the absence of that pre-trial order, if they worked less than forty hours, Your Honor wouldn't have jurisdiction of this case, although under the pre-trial order, I don't think it is a point.

By the Court: I don't think the question of whether any recovery may or may not be had determines whether there is an actual controversy, does it?

By Mr. Richardson: We alleged in our petition and they admitted the facts to be——

By Senafor Muse: We are not going to ask that question of any other witness.

By the Court: Proceed with the cross-examination.

Witness stands aside.

Sam Shell, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

[fol. 604] Q. 1. You are Mr. Sam Shell?

A. Yes, sir.

Q. 2. Mr. Shell, you are employed also by the Jewell Ridge Coal Corporation?

A. Yes, sir.

Q. 3. At the No. 1 Mine?

A. Yes, sir.

Q. 4. Have been employed for how many years, approximately?

A. Altogether since 1932, but, of course, I was gone from there from 1939 to 1943.

Q. 5. You are a track man, the same as Mr. Smith?

A. Yes, sir.

Q. 6. Work in what section?

A. Five Right in Parallel.

Q. 7. Did you hear Mr. Smith's testimony?

A. Yes, sir.

Q. 8. Do you use the same tools and equipment he uses?

A. Yes, sir.

Q. 9. Get them in the same manner?

A. All but those ties.

Q. 10. You don't use the ties?

A. Yes, sir, but they are delivered on my section to me.

Q. 11. That's the steel ties you are talking about?

A. Yes, sir.

Q. 12. Otherwise, you get your equipment in the same way he does?

A. Yes, sir.

Q. 13. And the same kind of equipment?

[fol. 605] A. Yes, sir.

Q. 14. You get to your place of work the same as he does?

A. Yes, sir.

Q. 15. And get out the same way?

A. Yes, sir.

Q. 16. When eight o'clock comes, where are you usually?

A. I am at the man-station. That's where I leave my bucket and jacket.

Q. 17. And about how long does it take you to get from the man station to where you work, usually?

A. About five minutes, usually.

Q. 18. And five minutes to return?

A. Yes, sir.

Q. 19. What's the height of the roof in Parallel?

A. On the main line, it generally runs five or six feet, but up on the entries, it gets smaller on account of the rock.

Q. 20. Most of your work is on the section?

A. Yes, sir.

Q. 21. What's the height over there?

A. Around forty-eight inches.

Q. 22. You walk under that height?

A. Yes, sir.

Q. 23. You get out of the mine the same as the other men, on the man-trip?

A. Yes, sir.

Q. 24. And the conditions under which you work are very similar to the conditions under which Mr. Smith works?

[fol. 606] A. Yes, sir.

No cross-examination.

Witness stands aside.

Wesley Johnson, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. Wesley Johnson?

A. Yes, sir.

Q. 2. Look towards the Judge and talk loud enough for all of us to hear you without straining ourselves. I believe you are what is called a wire man?

A. Yes, sir.

Q. 3. What does a wire man do? Let's see what your duties are principally?

A. The first thing I do——

Q. 4. Is it true that the wire man is a man who strings the electric wire?

A. Yes, sir.

Q. 5. Like the trolley wire?

A. Yes, sir.

Q. 6. That's your principal duty, stringing and repairing trolley wire?

A. Yes, sir.

Q. 7. You get to the lamp house about what time?

A. About six-thirty, I guess, or twenty minutes to seven.

[fol. 607] Q. 8. You get your lamp the same way everybody else gets theirs?

A. Yes, sir.

Q. 9. Mr. Johnson, in your work, give me a list or description of the names of the tools you use in your work. Have you made a list of them?

A. No, I don't have a list of them made.

Q. 10. Call them off, and I will see if I can check them.

A. I have a tool-bag in which I carry my small tools in, such as bell wrench and clip wrench and hammer.

Q. 11. What size hammer?

A. It will weigh about a pound and a half or two pounds.

Q. 12. All right.

A. A couple or three bits, maybe, to drill hanger holes with, and also a hatchet and a brace and bit that I carry in the tool-bag.

Q. 13. All right, sir.

A. Then I have a pair of pliers and a Stilson wrench and a small wrench that I carry on my belt, and we have a chain block.

Q. 14. How much does that chain block weigh, Mr. Johnson?

A. I imagine it will weigh about fifteen or twenty pounds, something like that. I don't know just what it would weigh.

Q. 15. All right.

A. We have a set of comalongs.

Q. 16. What's a comalong?

A. That's a thing you put on the wire that clamps on [fol. 608] the wire where you have two ends to make a splice.

Q. 17. Where you have the wire broken?

A. Draw it together with the chain block; the chain block has got a hook on each end and that's what we call a comalong. I believe the right name of them would be a Haven grip.

Q. 18. How much does that thing weigh, this comalong, approximately?

A. They weigh, I imagine, about seven pounds.

Q. 19. Do you have a blow-torch?

A. Yes, sir, have a blow-torch.

Q. 20. How about solder?

A. Yes, sir.

Q. 21. How much solder do you have?

A. A couple of pounds, maybe.

Q. 22. Do you have a soldering iron?

A. No, sir.

Q. 23. How do you melt that solder?
A. With the blow-torch.
Q. 24. Do you have a drill?
A. Yes, sir.
Q. 25. How much will it weigh?
A. Twenty pounds, I guess.
Q. 26. Do you have a hacksaw?
A. Hacksaw.
Q. 27. Hacksaw blades?
A. Yes.
Q. 28. Have a handsaw?
A. Have a handsaw.
[fol. 609] Q. 29. Do you have an axe?
A. No, sir, nothing but the hatchet is all I have.
Q. 30. How about some hangers?
A. Yes, sir.
Q. 31. What is a hanger, any way?
A. It's a complete thing you put in the top to hold your trolley wire.
Q. 32. A thing you place in the roof that comes down and catches on the trolley wire?
A. Yes, sir.
Q. 33. Do you take some of those in every day?
A. No, not every day.
Q. 34. How many times a week do you take one in or how many times a month?
A. It's according to what I have got to do.
Q. 35. I mean on an average. Do you take some in once a week or every two weeks or how often?
A. I imagine it would average about once a week.
Q. 36. These tools, how often do you take those in with you?
A. Every day, except the blow-torch. I don't take it every day.
Q. 37. How about the drill, do you take it every day?
A. Yes.
Q. 38. Do you take the hatchet every day?
A. Yes, sir.
Q. 39. And the chain block?
A. Yes, sir.
[fol. 610] Q. 40. The comalong?
A. Yes, sir.
Q. 41. The wire splicers?
A. Yes, sir.

Q. 42. The hacksaw?
A. Yes, sir.
Q. 43. Hammer?
A. Yes, sir.
Q. 44. Bell wrench?
A. Yes, sir.
Q. 45. Clip wrench?
A. Yes, sir.
Q. 46. Brace and bit?
A. Yes, sir.
Q. 47. The handsaw?
A. I don't carry the handsaw every day.
Q. 48. You take all these others in with you every day?
A. Yes, sir.
Q. 49. Where do you keep them at night?
A. I bring them to the machine shop We have a cabinet at the machine shop.
Q. 50. Do you have a helper?
A. Yes, sir.
Q. 51. After you get your lamp, do you go get these tools?
A. Yes, sir.
Q. 52. Does your helper go with you?
A. Yes, sir, he goes right along with me.
Q. 53. Are you and your helper able to carry all these tools and equipment on one trip?
[fol. 611] A. If we take the ordinary tools we work with out, we can take them all on one trip, but most of the time we have to gather up hangers and have to bring wire.
Q. 54. Do you take the wire in?
A. Yes, sir.
Q. 55. In what lengths?
A. One hundred and fifty to two hundred feet.
Q. 56. Is that copper wire?
A. Yes, sir.
Q. 57. How often do you have to take wire in, Mr. Johnson?
A. We hang the headings about, I would say, about every two or three months. We hang about two hundred and fifty feet, try to hang that much so we don't go back so often.
Q. 58. So you don't take the wire in so often?
A. No.
Q. 59. These other tools, I understand you take them in and bring them out every day?
A. Yes, sir.

Q. 60. Do you ride the man-trip in?

A. Yes, sir.

Q. 61. The same man-trip the other men have spoken about?

A. Yes, sir.

Q. 62. Carry your tools in the tool car?

A. Yes, sir.

Q. 63. Do you work in any particular section or all over the mine?

A. I work all over the mine.

Q. 64. From whom do you get your orders as to where you [fol. 612] shall work?

A. The mine foreman.

Q. 65. In the morning?

A. Yes, sir.

Q. 66. Before you leave on the man-trip?

A. Yes, sir.

Q. 67. Does he tell you, "Mr. Johnson, today you shall work in Parallel", or whatever section he wants you to work in?

A. Yes, sir.

Q. 68. Then you catch the cars on the man-trip going to that section?

A. Yes, sir.

Q. 69. Suppose you were working in Parallel Section—that's the one I remember so well, where would you take your tools and stuff off the man-trip?

A. Take them off at the man-station where the rest of the men unload at.

Q. 70. How do you get your equipment from the man-station to the particular point where you are going to work?

A. It depends on what I am going to do. If I had a break down and the motor couldn't get the empties placed up, I would go fix that, and if I was going to hang wire, I would leave my tools and let the motor bring them on up.

Q. 71. If you were in no particular hurry, you would walk up?

A. Yes.

Q. 72. At what point do you leave the man-station for whatever place you are going to work that day, what time? [fol. 613] A. It is according to what I am going to do. Some times I send my buddy on with the drill and I stay with the stuff and ride on up on the motor.

Q. 73. You use whatever method seems to be the most convenient and proper at the time to get your stuff up to where you are going to work?

A. Yes.

Q. 74. When your day is over with, do you get your tools up and get them back out on the man-trip the same way you came in?

A. Yes.

Q. 75. You go back out of the mine the same as everybody who rides the man-trip?

A. Yes, sir.

Q. 76. How much would you say all the tools you carry in and out every day would weigh, the best you can estimate?

A. They weigh around a hundred and twenty-five, I guess.

Q. 77. One hundred and twenty-five pounds?

A. Yes.

Q. 78. What time does your pay start?

A. Starts at eight o'clock.

Q. 79. You take off at lunch time about like these other men?

A. Yes, sir.

Q. 80. Any time it suits you?

A. Yes, sir.

Q. 81. Do you take your lunch-box with you or leave it at the man-station?

[fol. 614] A. I generally leave it where I think I will get to it.

Q. 82. You leave it about where you think you are going to be, is that it?

A. Yes, sir.

Q. 83. What time do you quit work?

A. Three-thirty.

Q. 84. And you walk back to the man-station and take your tools?

A. Yes, sir.

Q. 85. And your work time begins at eight and quits at three-thirty, with thirty minutes off for lunch?

A. Yes, sir.

Q. 86. Are you usually away from your man-station in the section where you are working before eight o'clock or do you stay there until eight?

A. No, like I told you, if I have a breakdown, I never pay any attention to the time. I go and get the place fixed up.

Q. 87. You pay more attention to the work you have to do than the time of day?

A. Yes, sir.

Q. 88. If it is necessary or desirable to start away from the man-station before eight o'clock, you do so?

A. Yes, sir.

Q. 89. And working all over the mine, you, of course, work under whatever conditions happen to exist in the particular section?

A. Yes, sir.

Q. 90. You have to adjust yourself to the height of the [fol. 615] roof wherever you happen to be?

A. Yes, sir.

Q. 91. In working all over the mine, you come in contact with whatever condition exists in the mine?

A. Yes, sir.

Q. 92. That's true as to the height of the roof or any other condition?

A. Yes, sir.

Cross-examination.

By Mr. Stuart:

Q. 1. Mr. Johnson, you are the wire man for No. 1 Mine?

A. Yes, sir.

Q. 2. You are in charge of the wire work for the whole mine, aren't you?

A. Yes, sir.

Q. 3. How many men do you have to help you in your work?

A. I have two at the present time.

Q. 4. You have two helpers, and some times when you need him, you have another one?

A. Yes, sir.

Q. 5. You may have three?

A. Yes, sir.

Q. 6. Now, in order to get to the place where you have got a piece of work to do, with your crew, how do you get into the mine and go to that place where you are going to work and take your equipment?

A. It used to be the way we got in, we rode the man-trips up to the last couple of months, maybe three months, I don't [fol. 616] know just how long, and we have a motor now.

Q. 7. You have got a little motor, haven't you, which is small, and for the use of you and your crew?

A. Yes, sir, we do have now.

Q. 8. And that's been the system for several months?

A. I don't know just how long. Don't remember just how long we have had the motor. It's been two or three months. I don't know just exactly how long we have had it.

Q. 9. Hasn't it been longer than two or three months, Mr. Johnson?

A. I wouldn't know, to tell you the facts about it.

Q. 10. You use that little motor, and on it you carry your tools and your supplies and you and your helper ride it to get wherever you are going to go to work, isn't that it?

A. We do.

Q. 11. If you have to get supplies at a particular point outside the mine, you run your motor down to the nearest point to that building and get your supplies, whatever they are?

A. We do.

Q. 12. And the same way, you run it to the machine shop to get your tools?

A. No; I don't run in the machine shop and get the tools.

Q. 13. Where do you keep your tools?

A. We keep the tools in the machine shop in a cabinet but we carry the tools out to the motor.

Q. 14. I suppose you run as near as you can get, don't you?

[fol. 617] A. The machine shop and motor barn is all in together, not very far apart.

Q. 15. They are all part of the building, aren't they?

A. Yes, sir.

Q. 16. So you have your helpers and between you, you bring these tools and put them on the motor, and you leave in time to get to the particular place where you are going to be at work by eight o'clock?

A. I do now, yes.

Q. 17. Ordinarily, you will start in something like seven-thirty?

A. Around that time.

Redirect examination.

By Senator Muse:

Q. 1. Between April 1st and June 20th, were you riding the man-trip in or riding the separate motor?

A. That's what I have just been trying to think, whether we were or not.

By the Court:

Q. 2. You say you don't know?

A. No, I don't remember.

Witness stands aside.

By Senator Muse: With that witness, we have concluded, I think, as to the No. 1 Mine. I think the process will be shorter, but we will take the No. 2 Mine now.

By the Court: All right, let's proceed.

[fol. 618] J. G. McFall, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are, Mr. J. G. McFall?

A. Yes, sir, John George McFall.

Q. 2. You work in No. 2 Mine?

A. Yes, sir.

Q. 3. Have you ever worked in No. 1 Mine?

A. No, sir.

Q. 4. You are a coal loader?

A. Yes, sir.

Q. 5. What process do you have over there at No. 2 Mine about getting your lamp?

A. We get our lamp at the lamp house with a check; turn the check in to the lamp man and he gives us a lamp.

Q. 6. The same as the witnesses have testified at No. 1?

A. Yes, sir.

Q. 7. How long does it take you to get your lamp?

A. That depends. If I get up to the mine and there is no one there, I immediately go up and get my lamp.

Q. 8. In which section do you work?

A. In this period from April 1st to June 2, I worked on Second North Butt-off off Main East.

Q. 9. Second North Butt-Off?

A. Yes, sir.

Q. 10. How far is that approximately from the portal, as you would guess?

[fol. 619] A. I would guess it is approximately a mile and three-quarters.

Q. 11. Do you ride a man-trip over at No. 2 Mine?

A. Yes, sir.

Q. 12. How are the man-trips made up over there?

A. At this period of time——

Q. 13. Do you have a man-trip for each section?

A. Yes, sir, at that period, they did.

Q. 14. Had a separate man-trip for each section?

A. Yes, sir.

Q. 15. And you, going in on a man-trip, would take the man-trip going to your section?

A. Yes, at this particular time, there were two man-trips connected together. One motor pulled the trip and the other motor tailed it.

Q. 16. Did that man-trip then divide?

A. Yes, sir.

Q. 17. One motor took some of the cars to one place and the other motor took the cars to the other section?

A. Yes, sir.

Q. 18. In other words, they used the tailing motor for the purpose of taking some of the cars up into a particular section?

A. Yes, sir. The Main East Motor, if he was in the lead, he would take his trip, all the trip, it run from eight to twelve cars, and he would take it and pull it on by our dead-end, and if there wasn't a big string of empties in this Second North Butt-Off, our motor would go in this section and we would unload out of the cars and the main [fol. 620] east man-trip would continue on its journey and our motor would come out and take our man-trip and pick up his empties wherever he would get them from and proceed on.

Q. 19. Do you have a tool-car on that man-trip?

A. Yes, sir, one tool car on the man-trip and we unload our tools and get our designated tool-car, the first car behind the motor on the man-trip.

Q. 20. Did your section foreman ride in the cars with you all going to that section?

A. Yes, sir, he rode our man-trip.

Q. 21. Who gave the orders on the outside to start the man-trip?

A. It was generally either the dispatcher or the mine foreman, or some times the section foreman told the motorman to go on.

Q. 22. Did you go in the mine in the same way the other men have described it here?

A. Yes, sir, we rode the man-trip in the mine.

Q. 23. Did the section foreman give any orders to the men as to what they should do while you were on the trip in?

A. He would probably tell the track layer some piece of track he wanted him to fix or some times he would check the men up by looking at them. He didn't call any roll, but he would look at them and see some one off, or tell some one you might work at this particular place, say "Mack, I want you to work the breakthrough today, you are ahead of the air, and you work the breakthrough".

Q. 24. He gave such orders as he deemed necessary?

[fol. 621] A. As he deemed necessary for the production of coal, sure.

Q. 25. On the man-trip, in what position did you ride in those cars?

A. This is approximate with me, I wouldn't argue with the map, but approximately a mile and a quarter we could ride on the bench sitting up pretty straight.

Q. 26. Do you have the same type of cars they have at No. 1?

A. I don't know. I have never worked at No. 1.

Q. 27. Do you have the "mourner's bench" at No. 2?

A. Yes, sir.

Q. 28. And down in the middle is a depressed place with a little offset running along the side?

A. Yes, sir.

Q. 29. That you call the mourner's bench?

A. Yes, sir.

Q. 30. Most of the men sit there?

A. Up until we hit the low top and it wasn't so comfortable to ride there.

Q. 31. Are you able to sit on the mourner's bench?

A. You can sit there if you sit with your head in this position?

Q. 32. How far would your head be from the roof?

A. It's not so far. They went through what we call a swag and up a steep hill and from there on it was very ununiform and the sand rock come down and you had to get down again. If you didn't, you would get your head bumped.

[fol. 622] Q. 33. Have any men you know of over there ever got hurt on the man-trip?

A. Yes, sir.

Q. 34. Mention some of them?

A. The only one I particularly know was Dave Adams.

Q. 35. How was he hurt?

A. We were coming out of an evening. We didn't have to wait. They didn't pull both man-trips with two motors. Our motor would make his trip up and we didn't wait on Main East.

Q. 36. When you finished in the afternoon, your man-trip would make up and come on out?

A. Yes, sir. We were coming out this evening and come to this steep hill I just mentioned and there was three cars on this trip, our motorman had three empties on the trip, and the main line tram had left a siding at the foot of the hill in the swag and the motorman said he didn't see the trip and none of us coal loaders knew it was sitting there until we hit it.

Q. 37. When was that?

A. That was approximately about the tenth day of this last May.

Q. 38. Was he hurt badly?

A. He was cut over his right eye, I believe, and in the force of it, it injured his neck to some extent, that he didn't work for about ten days.

Q. 39. Do you know of anybody else who has been hurt?

A. A fellow in the car ahead of him, named Claude Fentress, he didn't lose no time, it swolled his eyes and his nose was bloody, but he didn't lose any time.

[fol. 623] Q. 40. Do you know of anybody else who has been hurt on a man-trip over there?

A. That's all I personally know of.

Q. 41. At what point do you get off the man-trip?

A. It branches off and then we get in our man-trip and ride down in on the section to about, I would estimate, five to six hundred feet of my working place.

Q. 42. In other words, you get off on your section when you are within five or six hundred feet of the place you actually dig coal?

A. Yes, sir.

Q. 43. From that point on down to where you dig coal, what is the height of the roof?

A. I have heard the engineers measure the coal over time and again and they rate it thirty-six inches, but as they said before, this draw rock runs from nothing to six inches and the top would vary with the amount of draw rock but the coal would average about thirty-six inches high.

Q. 44. That should give you what height roof?

A. I take it it would average up thirty-eight or thirty-nine inches.

Q. 45. In traveling this five or six hundred feet down to where you actually dig coal, did you have to walk in such a stooped position as to permit you to pass under that roof?

A. Yes, sir, certainly you had to do that.

Q. 46. In doing so, did your back practically touch the roof?

A. Yes, sir, you would touch it going down through there. [fol. 624] Q. 47. You wore just an ordinary miner's jacket?

A. Yes, sir, I wore just an ordinary jacket.

Q. 48. In walking that distance, would you wear out the top of your jacket?

A. Yes, sir.

Q. 49. Your working place had the same height roof, I take it, as the five hundred feet you walked?

A. Yes, it was about the same. I was driving what is called an air-course. Of course, we walked the main entry until where it got down to the section where my place was.

Q. 50. In walking down to your working place, illustrate how you walked?

A. You had to go in a position something like this. Ordinarily we had a lunch bucket which we carried. I always carried it in my left hand and a cap-wedge in my other hand like this.

Q. 51. This cap-wedge, what's that?

A. It's a bar used over the top of the timber and I would walk something like this, with my own weight on the cap-

wedge and the bucket here, and I had to walk something like that.

Q. 52. That's the way you walked to your working place after getting off the man-trip?

A. Yes, sir.

Q. 53. From the point you walked after you got off the man-trip down to your working room, was that roof lower than it was before you got off the man-trip?

A. It was just about—I would say it was a variation on the main line, as I explained before, but after we branched [fol. 625] off, there was a distance down, I couldn't estimate, probably two hundred feet, where the rock had been shot, and it was fairly good walking, but the rest of the way, I would say, was just about average.

Q. 54. How far would you say the rest of the way would be approximately?

A. That we rode the man-trip and walked together?

Q. 55. Yes.

A. I judge some where between twelve and fifteen hundred feet, just a rough estimate of it.

Q. 56. Have you ever had any slate falls over in your section in No. 2 Mine?

A. Yes, sir, we have had slate falls.

Q. 57. In places have you seen where they have marked with a cross on the roof, indicating bad roof?

A. Yes, sir, I have seen lots of it.

Q. 58. After that was done, would these cross-marks stay there some times for weeks before the roof was removed?

A. Yes, sir, on this particular section it got so bad, the section foreman told me they had to stop the place and take the rock down and they haven't started it back up again. That was the 15th of July.

Q. 59. Would that rock fall with the cross-mark on it?

A. I have saw it fall, but not so often.

Q. 60. Occasionally?

A. Yes, sir.

Q. 61. In coming back out, you came on a man-trip and went to the lamp house?

[fol. 626] A. Yes, sir.

Q. 62. Did you have any delay in getting out?

A. We would have some delay some times. Have a wreck some times, nothing unusual to have a wreck and some times be held up at the dispatcher's office on account of some trouble they had with the tram.

Q. 63. In coming out, did the man-trips have priority or did the coal trips have priority?

A. Most of the time in that mine the main line trams was gone and we didn't hardly ever run into them, but occasionally, they was tied up and we had to wait.

Q. 64. Generally speaking, you came on out?

A. Yes, sir.

Q. 65. What time did you leave in the morning going into the mine?

A. We would leave at approximately seven-thirty, some times a little before at some times a little after, but approximately seven-thirty.

Q. 66. And you would get to your working place when?

A. That varied. The main line tram would store empties——

Q. 67. I know, but what time?

A. We were down in there at eight or eight-ten. I have seen it as high as nine, when something happened, but generally we got to our section at eight o'clock.

Q. 68. That was the time you began working?

A. That was the time I began work when I thought I was accomplishing something out of it.

Q. 69. That was when your pay started?

[fol. 627] A. Yes, sir.

Q. 70. Was that the time the company's rules required you to start digging coal?

A. Yes, sir, that was our starting time.

Q. 71. Or do anything else you could do in your room?

A. Yes, sir.

Q. 72. In order to get ready to load coal, did you have to do the same things the coal loaders testified in No. 1 Mine, set timbers and clean up some?

A. We load our bugdust as coal and we got paid the regular tonnage rate for loading it, and ordinarily, we wouldn't throw our dust back any more than just to clean the breakthrough.

Q. 73. In other words, at No. 2 Mine, you loaded the bugdust made by the cutting machine?

A. Yes, sir.

Q. 74. And loaded that with the coal and got paid for it?

A. Yes, sir.

Q. 75. And you would load the bugdust and set such timbers as you had to set?

A. Yes, sir.

Q. 76. In order to get to the point of loading coal in cars, you had to go through practically the same proceeding the other boys have testified to?

A. Yes, sir.

Q. 77. Except loading the bugdust?

A. Yes, sir.

Q. 78. You were paid over in No. 2 at so much a ton?

A. Yes, sir.

[fol. 628] Q. 79. And you ate lunch when it was convenient?

A. At odd times when I didn't have anything else to do.

Q. 80. Coming back out, did you walk back the five or six hundred feet to the man-trip station?

A. Yes, sir.

Q. 81. Carry your tools?

A. If I had any tools that needed repairing, I would carry them with me.

Q. 82. Under the rules of the company, you began performing manual work in your room at eight o'clock?

A. Yes, sir.

Q. 83. And quit at three-thirty?

A. Yes, sir.

Q. 84. Took thirty minutes off for lunch?

A. Yes, sir.

Q. 85. And you went in around seven-thirty and got out at about what time, generally speaking?

A. Generally speaking, it was around four; it might be a little before or a little after, but approximately four o'clock.

Q. 86. In the walking you had to do over there as you have described it, did you walk between the rails or on one side?

A. That depends. We was always looking for low places in the bottom and high places in the top.

Q. 87. And if the low places in the bottom and the high places in the top were on the outside of the rail, you stepped over there?

A. Yes, sir.

[fol. 629] Q. 88. Trying to give yourself as much space as you could?

A. Yes, sir.

Q. 89. It may not be clear,—after you left the main line man-trip, and your man-trip divided?

A. Yes, sir.

Q. 90. And you started down, in what position did you ride then, on the mourner's bench or in the middle of the car?

A. No, sir, I didn't sit on no mourner's bench. I would sit this way and double my feet and it wasn't such a strain.

Q. 91. In sitting in the middle of the car, did you have to lean over?

A. Yes, sir.

Q. 92. Describe that?

A. If I would sit in the middle of the car, we generally rode in about that position, stooped position.

Q. 93. You rode the coal cars in and out?

A. Yes, sir.

Q. 94. Were those cars in the same position as you heard the coal loaders at No. 1 describe them?

A. Yes, sir. At this particular time, they set out and took the weather, whatever the weather might be.

Cross-examination.

By Mr. Stuart:

Q. 1. They bring the empties in at night and store them on the section, don't they?

A. You mean the empties to be loaded the next day?

Q. 2. Yes.

A. At this particular time, the main line tram would [fol. 630] bring the empties up there and leaves us forty or maybe more than that, setting on our track where we have to go down, and when these mains went by there, it was necessary to clear that track and our motor would drop down and get them and couple on to them and take the empties in behind him on to the section as he went.

Q. 3. You shoot your coal over at No. 2 with Cardox?

A. Yes, sir.

Q. 4. And that's delivered to you at your working place with a motor?

A. Yes, sir, it's brung to us with a motor.

Q. 5. And the bugdust over at No. 2 is coal, isn't it?

A. Yes, sir, we load it for coal and get paid for it by tonnage rates.

Q. 6. The cut over there is right through the coal itself?

A. Yes, sir.

Q. 7. While at No. 1, there is some rock and the cut is through the rock?

A. I don't know, sir. No. 2 is all I ever worked on that job.

Q. 8. You made the top record over there loading the last quarter, didn't you?

A. According to the record—the company, prints the Jewell Valley Journal, and it showed that I made the record.

By the Court:

Q. 9. You don't dispute it?

A. We have some mighty good coal loaders over there.

By Mr. Stuart:

[fol. 631] Q. 10. You ran an average of $15.62 a shift?

A. Thank you for telling me. I don't know.

Q. 11. You don't dispute that, do you?

A. I don't dispute it. I haven't figured it out and I will take those figures to be correct.

Witness stands aside.

C. F. Clark, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. C. F. Clark?

A. Yes, sir.

Q. 2. Mr. Clark, I believe you are a coal loader at No. 2 Mine?

A. That's right.

Q. 3. What section do you work in?

A. I work on Two and Three East off of Four South.

Q. 4. You get into the mine and out of the mine just as Mr. McFall has described?

A. Practically the same way.

Q. 5. And your duties are a coal loader?

A. Yes, sir.

Q. 6. You have heard Mr. McFall testify?

A. Yes, sir.

Q. 7. You and he work in the same mine?

A. Yes, sir, we work in the same mine.

[fol. 632] Q. 8. On different sections?

A. Yes, sir.

Q. 9. Are your duties as a coal loader very similar to Mr. McFall?

A. I was pulling pillars at this time and he was in solid work.

Q. 10. You were pulling pillars and let the roof fall in, if necessary?

A. Yes, sir.

Q. 11. Your job was pulling the pillars and that was the last of the coal?

A. Extracting the last of the coal.

Q. 12. You were on retreat?

A. Yes, sir, that's what they call it.

Q. 13. Your duties, however, were substantially the same as his?

A. Yes, sir.

Q. 14. Your getting in and out of the mine was practically the same?

A. Practically the same.

Q. 15. Do you know whether the section bosses on the man-trips would give orders to the men as to what to do?

A. If they saw fit to give orders, they give them.

Q. 16. Have you heard them give orders?

A. They would tell a man what they wanted him to do. If the occasion arose, they would tell him any where.

Q. 17. Have you heard them tell them on the man-trips?

A. Yes, sir.

[fol. 633] Q. 18. Do you know of anybody being injured on the man-trips except the one Mr. McFall testified about, any additional ones?

A. I only know of those I have heard. I have not actually seen any one injured but over there, there might be a man killed and we won't see it or actually see the man, but we will know that it has been done.

Q. 19. Name some of those you have heard of being injured on the man-trips in recent months?

A. Recently?

Q. 20. Yes.

A. I knew, of course, of Mr. Adams, but it has been some time since I knew of a man being injured. Something like—in length of time?

Q. 21. Yes.

A. It's been three or four years, something like that. I didn't keep a record of it, but there was a man-trip wreck over there, run into a coal trip and the best I recall, there was,—I know those fellows were injured but I didn't see them injured,—there was Charley Adams, I believe he is now in the Army, and I believe he was on this same trip. I know the motorman that was running the trip but I don't know who it was injured. There was an Anders, I believe, Colonel Anders, I believe that's correct.

Q. 22. Are there any others that you know of who were injured on a man-trip over there?

A. I know of another fellow that was injured, or I don't know whether he was actually injured but the accident happened to him on this trip, but I think one of the other [fol. 634] boys knows more about it than I do.

Q. 23. Who is that?

A. Mr. Keen.

Q. 24. Otherwise, your duties and experience in that mine are no different from that given by Mr. McFall?

A. The same.

No cross-examination.

Witness stands aside.

At this point, it being 1:00 o'clock P. M., a recess was taken until 2:00 o'clock P. M., at which time the trial of this case was resumed.

Josh Keen, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. Josh Keen?

A. Yes, sir.

Q. 2. Mr. Keen, you are a coal loader at No. 2 Mine?

A. That's right.

Q. 3. In what section?

A. I work down in Peake's Branch.

Q. 4. You get into the mine and out about like these other witnesses who have testified?

A. That's right.

Q. 5. There is no difference in your getting in and getting out over there, I take it?

[fol. 635] A. Nothing only I go outside and come in again and they don't.

Q. 6. The trip you ride comes out of the mountain and goes back in?

A. That's right.

Q. 7. But so far as your moving in and out, it is similar to the other men?

A. Practically the same.

Q. 8. Your method of coal loading is practically the same?

A. The same as Mr. Clark. I worked pillar sections.

Q. 9. Is the section foreman in charge of the man-trip?

A. Yes, sir.

Q. 10. Does he give orders to the men on the man-trip?

A. Yes, sir, all the time.

Q. 11. Did I understand you to say that he does? I didn't understand you.

A. Yes, sir.

Q. 12. Mr. Keen, do you know of anybody being hurt or injured on the man-trip?

A. Yes, sir, I got hurt slightly on the man-trip.

Q. 13. How long ago?

A. In the winter of 1939.

Q. 14. How were you hurt?

A. I was riding in a trip and the tram lost a car off and the motor run into it, and I had my head down and hit my head against the side of the car.

Q. 15. Did you lose any time?

A. No, sir.

[fol. 636] Q. 16. Do you know of anybody else who was hurt on a man-trip?

A. Mr. Andrew White, he thought something bit him or stung him one. The doctor didn't know, I don't think, but he lost, I will say, three of four days.

Q. 17. Did that happen on the man-trip?

A. Yes, sir.

Q. 18. Were you on that same man-trip?

A. Yes, sir.

Q. 19. When you come out of the mine, you get rid of your lamp the same way the others do?

A. That's right.

Q. 20. So far as your activities are concerned, they are

substantially the same as the other coal loaders in that mine?

A. Practically the same.

No cross-examination.

Witness stands aside.

JAMES WOOD, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct-examination.

By Senator Muse:

Q. 1. Is your name Wood or Woods?

A. Wood.

Q. 2. James Wood?

A. James Wood.

Q. 3. I believe you are a track man at No. 2 Mine?

A. Yes, sir, my regular work is track man.

[fol. 637] Q. 4. You have been working there how long?

A. Since 1938, December.

Q. 5. As a track man all that time?

A. No, sir, I have loaded some coal when I first went in there.

Q. 6. How long have you been a track man?

A. About three years.

Q. 7. Were you in the court room when the track men from No. 1 Mine testified?

A. Yes, sir.

Q. 8. You heard them testify?

A. Yes, sir.

Q. 9. Do you use the same tools they use?

A. Yes, sir.

Q. 10. Do you handle the tools in the same way?

A. Yes, sir.

Q. 11. Take them back and forth in the same way?

A. Yes, sir.

Q. 12. Is there any difference in the work you do as a track man in No. 2 Mine from the work they described themselves as doing in No. 1 Mine?

A. I don't know what about the machine. We lay track after a machine. I don't know whether they do or not.

Q. 13. Explain the difference.

A. A track machine, you lay your track.

Q. 14. Do you mean a cutting machine?

A. Cutting machine on the track. It cuts off from the track.

[fol. 638] Q. 15. A cutting machine that cuts off the track?

A. Yes, sir. We lay our track in four or five feet of the face and you take a machine that unloads off the truck, you leave your track back at least six feet.

Q. 16. You bring your track up closer to the face so the machine can stay on the track and still cut?

A. Yes, sir.

Q. 16. With that exception, is there any difference between what you do as a track man in No. 2 Mine and what these men did as track men in No. 1 Mine?

A. No, sir.

Q. 17. How about reporting, who do you report to?

A. I report to the section boss.

Q. 18. Before you go into the mine or after?

A. No, sir, after I go in the mines part of the time and part of the time on the outside.

Q. 19. Do you go in on the man-trip?

A. Yes, sir.

Q. 20. Do you put your tools in the tool-car as the men described at No. 1 Mine?

A. Yes, sir.

Q. 21. How close does the man-trip take your tools to where you will actually use them?

A. They take them about five hundred and fifty feet to the first working place.

Q. 22. How do you get them that five hundred and fifty feet?

A. I carry them.

Q. 23. Do you have a helper?

[fol. 639] A. Yes, sir.

Q. 24. To help you carry them?

A. Yes, sir.

Q. 25. Do you go in the mine about seven in the morning?

A. It varies.

Q. 26. About what time do you go in?

A. We go in from about ten after seven to seven-thirty, something like that.

Q. 27. What part of the mine are you usually in at eight o'clock?

A. At my working place.

Q. 28. Do you get off at the man-station inside?

A. No, sir, the man-station is out at the mouth of the entry, which they haul the men now down into the mouth of No. 9 Room on that section.

Q. 29. I am talking about what you were accustomed to doing?

A. We had to get off at the mouth of the entry.

Q. 30. And from there, you had to walk down and carry your tools?

A. Yes, sir.

Q. 31. Am I correct in that?

A. Yes, sir.

Q. 32. In walking that distance, what is the height of the top?

A. There is some of it,—it varies all the way down the entry.

Q. 33. About what is the average?

[fol. 640] A. Where the top has fell out, you have got pretty nice walking, and where it has not, it is filled with cross-collars and is low.

Q. 34. How low?

A. It will run around forty inches.

Q. 35. And you have to walk that low?

A. Yes, sir.

Q. 36. What do you call it, the cut-off where you leave the main man-trip?

A. We cut off at Five East.

Q. 37. You used some expression to describe where you got off the man-trip?

A. At that time, we got off at the man-station, and we had to — the first walking place, it must have been around twelve to thirteen hundred feet to walk.

Q. 38. With the roof varying in height from——

A. From about forty inches on up to six feet.

Q. 39. And you and your helper would carry your tools that distance?

A. Yes, sir.

Q. 40. Where were you at eight o'clock in the morning?

A. Most of the time we was always at our working place to start work at eight o'clock.

Q. 41. You would have ridden the man trip in as far as it was going, and gotten off and walked the distance over to where you were going to start to work?

A. Yes, sir.

Q. 42. And at eight o'clock, do I understand you were usually up at the place where you were going to perform [fol. 641] physical work?

A. Yes, sir.

Q. 43. At what time do you leave the place where you actually perform physical work?

A. After the work?

Q. 44. Yes.

A. At three-thirty.

Q. 45. Did you reverse the process and walk back and catch the man-trip?

A. Yes, sir.

Q. 46. What did you do with the tools?

A. We always leaved them at a convenient place to where we would think we would start at the next morning, if there wasn't some unnecessary work the section foreman wanted done.

Q. 47. Would the section foreman give you orders while he was on the man-trip?

A. Yes, sir, he has.

Q. 48. Is that anything unusual for him to give orders on the man-trip?

A. No, sir.

Q. 49. Were you in the court room when the witnesses testified about the section foreman at No. 1 calling the men down if they horse-played or got off while the man-trip was moving or got on while the trip was moving?

A. Yes, sir.

Q. 50. Does that same condition exist over at No. 2?

A. Yes, sir, it does.

Q. 51. After you leave the main entry to go to the place [fol. 642] where you started working, what was the condition of the place in so far as height was concerned?

A. The height was very well.

Q. 52. In riding on these man-trip cars, did you sit on the mourner's bench?

A. Yes, sir.

Q. 53. Did you have to duck over?

A. Yes, sir.

Q. 54. Illustrate how?

A. About like this.

Q. 55. That's true in the main entrance?

A. Yes, sir.

Q. 56. After you leave the main entrance, how about it?

A. If you rode on up into the working place, you would have to get down off the mourner's bench or lay down in the car.

Q. 57. I understand you walk up in the working place?

A. Yes, sir.

Q. 58. Were you ever hurt on a man-trip?

A. No, sir.

Q. 59. Do you know of anybody who has been hurt other than those who have been mentioned?

A. No, sir.

Q. 60. You can't add anything to it?

A. No, sir.

Cross-examination.

By Mr. Stuart:

Q. 1. Mr. Wood, I believe you said your work is on a section?

[fol. 643] A. Yes, sir.

Q. 2. You said something to the effect that the section foreman gives orders to the men on the man-trip. Now, you have mentioned about orders with respect to safety appliances of one kind and another, but what I want to ask you about now is with respect to work. The section boss doesn't give the men any orders to do work on the man-trip itself, that is, to do work to be performed on the man-trip, does he?

A. He gives orders about work after you get off the man-trip, about where you are going to work. If he has anything in particular that he wants done, he will tell you on the man-trip. He has me.

Q. 3. That's for work for them to do when they get to the place where they are going to work?

A. Yes, sir, and he will tell you while you are going in on the man-trip that he wants done up in that place.

Q. 4. You don't mean, I take it, that while the men of his section are going in on the man-trip, that he goes to each one of them and tell each one of them what he wants him to do?

A. No, sir. If he is sitting in the car beside you, and he has something he wants you to do, he will tell you.

Q. 5. If he sees you and thinks about something he wants you to do, he will tell you?

A. Yes, sir.

Q. 6. If he sees you outside and thinks of something he wants you to do, he will tell you then, too, won't he?

A. Yes, sir.

Q. 7. Most men on any particular work don't need any orders from the foreman, do they; they know what they ought to do and go ahead and do it?

[fol. 644] A. Yes, sir.

Q. 8. At the end of the day's work, you say you leave your tools where you think it will be most convenient to use them the next day?

A. Yes, sir.

Q. 9. In other words, if you are working on a particular job and know you are still going to be working there the next day, you leave your tools right there?

A. Yes, sir.

Witness stands aside.

ROBERT BUCHANAN, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. Robert Buchanan?

A. Yes, sir.

Q. 2. I believe you are a track man at No. 2 Mine?

A. Yes, sir.

Q. 3. You know Mr. James Wood, of course?

A. Yes, sir.

Q. 4. Did you hear the track men testified who were track men over at No. 1 Mine?

A. Yes, sir.

Q. 5. You have the same tools as all these other track men?

A. Yes, sir.

Q. 6. Perform the same duties?

[fol. 645] A. Yes, sir, practically the same thing.

Q. 7. What section do you work in?

A. First Right off of Peake's Branch.

Q. 8. You get on the man-trip like they do?

A. Yes, sir.

Q. 9. Does your section foreman give instructions as to the day's work while on that man-trip, on occasions?

A. Occasionally, if there is anything tore up the night before that I have not heard about, he will tell me.

Q. 10. Do you know of anybody who has been hurt on a man-trip that hasn't been mentioned here?

A. No, sir.

Q. 11. You can't add anything to it?

A. No, sir.

Q. 12. Is the roof the way you go any different from the roof the way Mr. Wood goes?

A. I have never been on the section he is on, but the way he described it, it is practically the same.

Q. 13. About the same as your roof?

A. Yes, sir.

No cross-examination.

Witness stands aside.

Roy Addison, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

[fol. 646] Q. 1. You are Mr. Roy Addison?

A. Yes, sir.

Q. 2. I believe you are a motorman at No. 2 Mine?

A. Yes, sir.

Q. 3. You have been a motorman for how long?

A. Around five years, pretty close to that, over at No. 2 Mine.

Q. 4. You get your lamp the same way the other men have described?

A. Some times my buddy takes my check and gets my lamp. He rides a different car.

Q. 5. You heard the motormen at No. 1 Mine testify?

A. Yes, sir.

Q. 6. Did you hear them describe what their duties were and how they performed them?

A. Yes, sir.

Q. 7. Do you do substantially the same thing at No. 2?

A. We have Cardox at No. 2 that we have to load and unload.

Q. 8. Do you get your motor out on the yard like they do at No. 1?

A. Yes, sir.

Q. 9. Do you sand it and oil it?

A. Yes, sir.

Q. 10. The same as they did?

A. Yes, sir.

Q. 11. Do you go into the mine on clearance orders?

A. Yes, sir.

[fol. 647] Q. 12. From whom?

A. From the dispatcher or the mine foreman. They are both out there generally all the time.

Q. 13. Tell how you perform your duties to any extent different from No. 1?

A. Getting Cardox is all. We have a big wooden box——

Q. 14. Where do you get it?

A. In the Cardox House; They have a rack.

Q. 15. Is that outside or inside the mine?

A. Outside, yes, sir.

Q. 16. What would you do with the Cardox?

A. There is two motors on the run we are on. They split up. We take our part and put them in the back of the motor. They are different from the motors at No. 1 and what Cardox I would need, we would carry around and put in the deck of the motor, so we can carry them up on the section.

Q. 17. Do you take Cardox to each man?

A. Yes, sir.

Q. 18. Within a few feet of each coal loader?

A. Yes, sir.

Q. 19. Would you pull a man-trip in?

A. Yes, sir, most of the time I would be pulling it; if not, I would be tailing.

Q. 20. What time did you go in the mine in the morning?

A. It would vary; some times, I would be down the track a little from the other motors. It would run from seven-ten to seven-thirty. They try to get the last man-trip in by twenty-five to eight.

Q. 21. Where would you be at eight o'clock?

[fol. 648] A. I wouldn't go on my section. The other motor would take the men up on the section and I would get empties on the outside and follow him in.

Q. 22. Where would you be at eight o'clock?

A. I would be near to my section. Some times I wouldn't and some times I would be there.

Q. 23. With cars?

A. Yes, sir. Some times I would have cross collars to take in. They always set cross collars and cap pieces in on the night shift.

Q. 24. You performed your duties about like the other men testified?

A. Yes, sir.

Q. 25. And came out with the man-trip?

A. Yes, sir.

Q. 26. What time did you quit work?

A. We quit work, some times we would be a little late, they wouldn't let us leave a car on a section and we tried to clear them up, and by picking up the men, it come to around three-thirty.

Q. 27. Were you allowed certain pay for the man-trip?

A. Yes, sir, they give us an hour.

Q. 28. One hour a day?

A. Yes, sir.

Q. 29. How long would it take?

A. It would take more than that hour. That was an advance section when I went over there in April and we had to load a lot of Cardox. I have loaded forty-eight, is the most I ever loaded.

[fol. 649] Q. 30. On an average, how much time would you spend in your duties in hauling the man trip in and out, for which they allowed you an hour?

A. It would take practically eight hours and a half or a little better, to do that, by handling the Cardox and everything. We have to bring the empty Cardox out that evening. You couldn't haul them in your motor, they wouldn't allow you to do that.

Q. 31. Am I correct that they allowed you an hour for your duties in hauling the man-trip in and out, but that it took you longer than an hour to haul the man-trip?

A. Yes, sir, they had an agreement on that.

Q. 32. How long would it take you to get it in and out?

A. I don't know exactly. We have timed it, it would take thirty to thirty-five minutes to pull the man trip, if you got out first. If you was behind the other motors, it would take you longer than that.

Q. 33. You mean each way?

A. Yes, sir.

Q. 34. Do you know of anybody getting hurt over there in that mine?

A. My buddy got his back broke.

Q. 35. When was that?

A. Between the last of April and the first of May. It seems to me like—I went to the hospital to see him, and he said he drawed some time for up in May, I don't know.

Q. 36. What was his name?

A. Curtis Shelton.

[fol. 650] Q. 37. Roy, I may not have gotten it plain. Where did this accident occur?

A. It was Two East.

Q. 38. Was that on the main haulage?

A. Yes, sir. It was maybe a week that this rock had been reported and they hadn't took it down, and we forgot about it, and we placed an empty up in the place and went back to get another empty, and take a load out, and my buddy whistled at me and I didn't hear him and I waited a while, and while I was waiting for him to tell me to go ahead, that rock fell on him.

Q. 39. Did you see it fall?

A. No, sir, there was a curtain between us, this brattice cloth.

Q. 40. Did you go up and see him?

A. I helped get him out from under there. The rock fell across the car.

Q. 41. Where did the rock fall from?

A. It fell from the roof.

Q. 42. Had it been marked bad?

A. Yes, sir, been reported to the foreman.

Q. 43. I am not certain whether that was on the main haulage or not?

A. It was a switch-off Parallel East heading, it was No. 2 heading, just one stump left in there.

Q. 44. A switch going off the main haulage way?

A. Yes, sir, right off the main line east.

Q. 45. Has he gone back to work?

A. He is in a wheel chair. He will never work any more, [fol. 651] the doctors say. He lives down below Richlands.

Q. 46. In the places where you run, what's the height of the roof, generally?

A. In sections where I run, I seen one of the coal loaders

measure the other day, and he said it was fifty-two inches but it varies, some of them are lower down.

Q. 47. How do you sit on the motor?

A. I sit sort of like I am in this chair only I keep this leg up under me.

Q. 48. Do you sit up straight?

A. I do in places, some I have to bend over.

Q. 49. What's the lowest bending over you have to do?

A. About like that. I keep my arm on the bumper of the motor.

Q. 50. Does the coal ever scrape when you pull the cars out?

A. Lots of cross collars will hang you up. The hill I am on is very steep and I have to split the load and if the coal loaders load big, I have to back up and scrape it off.

Q. 51. Do you get a shovel and scrape them off?

A. No, it will pull it off. If you have enough sand. You have to have two or three good tries at it, though.

Q. 52. If you have enough sand and power, you can pull it off?

A. Yes, sir.

Q. 53. That, of course, scatters coal over the walk way and track inside?

A. Yes, sir.

[fol. 652] Cross-examination.

By Mr. Stuart:

Q. 1. You say you are a motorman in No. 2 Mine?

A. That's right.

Q. 2. On one of the gathering motors?

A. Yes, sir.

Q. You spoke of the method of handling the Cardox and said that at this time you were, the arrangement was such and such, but since then, it had been changed. What do you mean by "this time"?

A. Now they send the Cardox over, they have got a man that don't do nothing but that, take them to each section and put them in a little box, and when we pass there, we have to load them up again on the motor, we don't put them in the box, and each loader gets his Cardox out of there and brings the empties back at night.

Q. 4. I am trying to find out when it was that this change was made?

A. They made it in the last three months, I would say, or four, something like that. I wouldn't say the exact time.

Q. 5. Up to some distance back, some three or four months, or some time you are not sure about, you took the Cardox in?

A. Yes, sir.

Q. 6. How did you take it?

A. We put it in the car next to the motor in a box,—the box wouldn't hold them all and we would have to put them in the car around the box.

Q. 7. That was not when you were taking a man-trip in? [fol. 653] A. Yes, sir, they used it for a tool-car, too, and the Cardox.

Q. 8. Back at that time, whenever it was, you say you were allowed an hour's time for bringing the man-trip in and taking it out?

A. Yes, sir.

Q. 9. And you say it took you thirty to thirty-five minutes each way?

A. Yes, sir, it would. Some times it would take more and some times it wouldn't take that long. We would come outside and the boss would hold us up some making up his report. We had two reports at that time, that he had to turn in, how many Cardox he sold, and how many good ones left, and we would bring our Cardox chips in that we collected that day for the Cardox.

Q. 10. You spoke of an accident when your brakeman had a piece of slate fall on him. That was not on a man-trip, was it?

A. No, sir.

Q. 11. You were spotting a car at that place, I believe?

A. We was bringing a car out of the place and he halloed at me, and I didn't understand what he said, and while I was stopped, that rock fell on him, and by the time I got back to him, the coal loader was holding his hand up out of the water. He was in a water-hole.

Witness stands aside.

[fol. 654] FORREST RITCHIE, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Col. Harris:

Q. 1. Mr. Ritchie, are you an officer of one of the Local Unions?

A. Yes, sir, I am recording secretary.

Q. 2. Of which one?

A. Seventy-three thirty-two.

Q. 3. Over at one of the mines of the Jewell Ridge Coal Corporation?

A. Yes, sir.

Q. 4. How long have you been working for the Jewell Ridge Coal Corporation?

A. October 12th, 1936.

Q. 5. What work have you been doing between April 1st, 1943, and the present time?

A. I was a coal dumper.

Q. 6. What's that?

A. That's the man that dumps the coal as it comes out of the mine.

Q. 7. Are you an inside or an outside man?

A. I am classed as an outside man.

Q. 8. How many coal dumpers would there be working on your shift?

A. One.

Q. 9. And that would be you?

[fol. 655] A. Yes, sir.

Q. 10. Was all the coal that was hauled out of that mine during the shift you were working coal that passed under your supervision?

A. Yes, sir.

Q. 11. Did you have occasion during this period from April 1st, 1943, to the present time to notice the condition of the coal that came out of the mine?

A. Yes, sir.

Q. 12. With reference to rock or slate falling on top of the coal cars?

A. I did.

Q. 13. Describe to the court what you found on these coal cars as they came up and were ready to be dumped into the gondolas?

A. Well, some times the car will have a small rock on it, maybe weigh fifty pounds, seventy-five pounds, *seventy-five pounds*, and my buddy, the check-puller, rolls those rocks off himself, and if there is any that he can't handle by himself, I have to go back and help him roll them off the cars.

Q. 14. Is that often?

A. I have known him some days to have one or two; some days he is busy practically all day taking rocks off the cars.

Q. 15. Where would the rock come from, in your judgment?

A. To my opinion, they come from the top.

Q. 16. Would you notice any difference in the cars with rock on top of the coal on one day more than any other day?

A. It seemed on Monday there was more rock than any other time.

[fol. 636] Q. 17. They didn't operate the mines on Sunday?

A. No, sir.

Q. 18. Then on Monday how many cars would you find, roughly speaking, during the day that slate had fallen from the roof on those cars and was still on the cars when they got up to be dumped?

A. It would vary from time to time. Some times there would be six or eight cars in the run of a shift and I have known it when, as I say, we would be practically busy,—I have known it to be as many as twenty.

Q. 19. In your shift?

A. Yes, sir.

Q. 20. Would you see any indication in the way in which the coal was placed in the cars which lead you to believe that the coal had scraped against the roof or top or cross collar on the way out of the mine?

A. That was frequent.

Q. 21. Was that as frequent as having rocks fall from the roof?

A. You would see more of that than you would rock.

Q. 22. More indication of it having scraped against the roof?

A. Yes, sir.

By the Court:

Q. 23. How could you tell?

A. It would be smooth, like you would take something and planed it up real smooth and the coal would be ground up real fine right on top.

[fol. 657] Q. 24. That's what you base your judgment on?

A. Yes, sir.

By Col. Harris:

Q. 25. A cross-collar is a timber that goes from one post to another?

A. Yes, sir.

Q. 26. Take a car load of coal that comes out of the mine that hasn't hit anything, how is the top of that car in appearance?

A. It has little holes all over the top where the coal loaders throws his coal in, throws a lump in, and it will be rough on top.

Q. 27. And the cars you thought had been scraped against the cross-collars or roof had been smoothed off as if something had been dragged across them?

A. Yes, sir.

By Mr. Richardson: We move to strike out the testimony of this witness because it is immaterial and irrelevant and based entirely upon inferences and conclusions which he would draw, and not as to facts which he knows himself.

By the Court: I think that goes to the weight of the testimony. Frankly, I think it is rather remote, I can see nothing material about it, except rather remotely going into the hazard of the man-trip. For such weight, as I deem it worthy of, I will overrule the motion and leave it in.

By Mr. Stuart: With our usual reservations about cross-examination as to evidence regarding hazards, we will cross-examine:

Cross-examination.

By Mr. Stuart:

[fol. 658] Q. 1. Mr. Ritchie, do you see the man-trips come out in the evening?

A. Yes, sir.

Q. 2. How many rocks do you see on them when the trip comes out?

A. What the men rides on.

Q. 3. The same ones they put in there to sit on are the ones you see?

A. Yes.

By the Court:

Q. 4. I thought they put planks in. The rocks don't make the mourner's bench sit any easier, does it?

A. If the car is wet, it would be some help.

Witness stands aside.

HARRISON KEEN, another witness introduced on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Senator Muse:

Q. 1. You are Mr. Harrison Keen?

A. Yes, sir.

Q. 2. I believe you are a bond man?

A. That's right.

Q. 3. The first one of your description that's testified in this case, aren't you?

A. Yes, sir.

Q. 4. You work in both Mine No. 1 and Mine No. 2?

[fol. 659] A. Both mines.

Q. 5. So we may understand, suppose you tell us what does a bond man do?

A. He welds bonds on joints in the track.

Q. 6. Is that these little copper connecting pieces that you see on street car tracks occasionally?

A. I imagine they are the same thing.

Q. 7. That connects two rails together?

A. Yes, sir.

Q. 8. That's what you do on the tracks in the mines?

A. Yes, sir.

Q. 9. Are you the only bond man employed by this coal company?

A. Yes, sir. I have a helper.

Q. 10. But you are the only one in charge of the bond work?

A. Yes, sir.

Q. 11. What time do you get your lamp?

A. About six-thirty of a morning.

Q. 12. Do you get it the same way everybody else gets theirs?

A. Yes, sir.

Q. 13. In your work, what tools and equipment do you use?

A. The tools we use is nothing but a regular mining pick with a wedge on one end, sharpened like a wedge, and the other is just a point.

Q. 14. What kind of material do you use?

A. Use bonds and welding steel.

Q. 15. And what is the bond, what is it made of?

[fol. 660] A. It is copper with steel on each end of it.

Q. 16. How is that fastened to the rail?

A. Welded on with an electric welder.

Q. 17. Do you take some of these bonds with you every day?

A. Yes, sir, nearly every day.

Q. 18. How many do you take?

A. If we are checking the main line track to replace a broken rail or something, we usually check out ten or fifteen bonds.

Q. 19. How much do they weigh?

A. Ten or fifteen pounds.

Q. 20. How many, generally, do you take in?

A. On an average, twenty-five.

Q. 21. They would weigh how much?

A. Around fifty to seventy pounds, I guess, altogether.

Q. 22. Where are they gotten?

A. At the supply house.

Q. 23. Do you have to have an order to get them?

A. Yes, sir.

Q. 24. Who do you get them from? The order, I mean.

A. From the shop foreman at the machine shop.

Q. 25. Do you take in any welding steel with you?

A. If we take ten bonds, we take three or four pounds of welding steel.

Q. 26. The amount of welding steel you take depends upon the number of bonds?

A. Yes, sir.

Q. 27. Do you take some in every day?

[fol. 661] A. Yes, sir.

Q. 28. How about a welding shield, do you have one?

A. Yes, sir.

Q. 29. Do you take that in every day?

A. Yes, sir. I say every day, some times we leave it on the section.

Q. 30. Generally, how often do you bring it in?

A. Three or four times a week.

Q. 31. Where do you leave it in the evening when you bring it out?

A. In the machine shop.

Q. 32. This welding machine, how much does it weigh?

A. I imagine about eight pounds. I handle it a lot.

Q. 33. After your work, if you haven't finished, do you leave it there over night?

A. Yes, sir.

Q. 34. How often during the week do you bring that machine out?

A. Maybe three or four times. If we are going to change sections, we generally always bring it out to go to another section the next day.

Q. 35. I am trying to strike an average?

A. I would say four times, average.

Q. 36. Do you bring your pick out every day?

A. Generally. It has to be sharpened.

Q. 37. The blacksmith sharpens that like he does the others?

A. That's right.

Q. 38. How do you get those bonds, welding machine, [fol. 662] tools and supplies in where you are going to use them?

A. We check the bonds out at the lamp house in the morning and the steel, and carry them to the portal where we catch the trip and load them up in the tool car.

Q. 39. What about the welding machine?

A. We generally leave it setting out at the portal and set it up in the trip.

Q. 40. You mean put it in the car?

A. Yes, sir.

Q. 41. In the tool car?

A. Yes, sir.

Q. 42. How about the bonds and the welding steel?

A. Yes, we put them in the car, too.

Q. 43. The equipment and stuff you carry in, you put in the tool car?

A. All except the welding machine.

Q. 44. Suppose you are going to work at parallel section, how do you get there?

A. Catch a man-trip.

Q. 45. The same way the coal loaders get to parallel, if they work in that section?

A. That's right.

Q. 46. At what point would you take off your supplies and tools?

A. If we was going to a section, we take it off at the man-station where the other men gets off at.

Q. 47. Suppose you were working five hundred feet away from a man-station, or any other distance, how do you get [fol. 663] your supplies and tools up to where you were actually going to use them?

A. We pull them with the machine.

Q. 48. Is the machine fixed so it will stay on the track?

A. No, sir.

Q. 49. How do you pull it?

A. On runners like a sleigh.

Q. 50. How do you pull it?

A. Use a cable and tie the machine and drag it along.

Q. 51. Who does the pulling?

A. That's the helper and myself both.

Q. 52. You hitch up and go to pulling?

A. We don't pull at the same time.

Q. 53. Moving from the man station to where you are going to use it is a problem for you and the helper?

A. Yes, sir.

Q. 54. One man pulls until he gets tired and then the other man takes up?

A. Yes, sir.

Q. 55. What time do you leave the man station, usually?

A. Not until eight o'clock.

Q. 56. So going from the man station to where you are actually working is after your pay begins at eight o'clock?

A. Eight o'clock is when my pay begins.

Q. 57. Am I correct that your pay does begin at eight o'clock?

A. Yes, sir.

Q. 58. And ends when?

[fol. 664] A. Three-thirty.

Q. 59. You take thirty minutes off for lunch?

A. Yes, sir.

Q. 60. You eat lunch about like the rest of the men?

A. That's right.

Q. 61. What time do you quit performing actual work with that machine?

A. Three-thirty, generally.

Q. 62. Suppose you are going to work in that section the next day, where do you leave the machine?

A. Leave it on the section.

Q. 63. At the exact point?

A. Yes, sir, right where we quit off.

Q. 64. And you move from section to section over both mines?

A. Yes, sir.

Q. 65. After you finish one section, do I understand you take these tools and equipment back out of the mine and go to another section then?

A. Yes, sir.

Q. 66. Going back out, you go in reverse order to that in which you came in?

A. That's right.

Q. 67. How many hours a day are you in the mine?

A. We generally leave about seven and get back about four-thirty or five o'clock.

Q. 68. For how many hours are you paid?

A. Seven hours.

[fol. 665] Q. 69. From eight to three-thirty less thirty minutes for lunch?

A. That's right.

Q. 70. Is that true in No. 2 Mine also?

A. Yes, sir.

Q. 71. Is there much difference in the type of work you do at No. 2 Mine and the type you do in No. 1 Mine?

A. The same thing.

By the Court:

Q. 72. Do I understand that every rail is bonded?

A. Every rail under the trolley wire except the thirty pound steel. We just use one rail for return but on the main haulage we use two bonds to every joint on each rail.

Cross-examination.

By Mr. Stuart:

Q. 1. Mr. Keen, you work a seven hour day, you say?

A. Yes, sir.

Q. 2. And your time starts at eight o'clock and ends at three-thirty, with half an hour out for lunch?

A. Yes, sir.

Q. 3. And you are supposed to be at the point where you are going to start work at eight o'clock in the morning?

A. Supposed to be on the section, in the mine where I start my work at, when my pay starts.

Q. 4. How do you get to the place where you are going to work?

A. Ride a man-trip.

Q. 5. I believe you said you work all over both mines?

[fol. 666] A. That's right.

Q. 6. Part of the time you are not even inside the mine, are you?

A. Some days I don't go in. I work some times between the mountains on the outside.

Q. 7. And you have some tracks outside the portal that you have to check?

A. Yes, I work from the tipple all the way inside as far as the trolley line goes.

Q. 8. Some days you are working just inside the portal, are you?

A. That's right.

Q. 9. So you may be working at the fartherest distance away from the portal or you may be working at the closest place to the portal on a particular day?

A. That's right.

Q. 10. When you state that you go inside about seven o'clock and don't get back until four-thirty or five, you are talking about those days when the place where you are going to work is the fartherest distance away from the portal, aren't you?

A. Riding the man-trips.

Q. 11. When you are working at some place close to the portal, of course those hours you gave wouldn't apply?

A. I generally check the main line track about every thirty days unless there is some tear-up and I have to check it right then.

Q. 12. This welding doesn't last forever, you say you [fol. 667] have to check it ever so often?

A. Yes, sir.

Q. 13. You say you check the main line about how often?

A. About every thirty days.

Q. 14. On the sections, you don't check that often, I suppose?

A. No.

Q. 15. I suppose the reason why this welding has to be done is in order to provide a circuit for the electric current?

A. That's right, get your return.

Re-direct examination.

By Senator Muse:

Q. 1. On an average, how much time will you spend in the mine as distinguished from the time you spend outside?

A. Well, I wouldn't have an outside day's work maybe once in two months, unless there is some new tracks being laid outside.

Q. 2. The rest of the time you spend some where in the mines?

A. Yes, sir.

Q. 3. When you work in the mines, do you ride the man-trip?

A. Yes, sir.

Q. 4. If you do ride the man-trip, you get out about the same time, regardless of how far in you are working?

A. Yes, sir.

Q. 5. Is that true because the man-trip gets the men anywhere in the mine?

[fol. 668] A. Yes, sir.

Re-cross examination.

By Mr. Stuart:

Q. 1. You say you don't work outside the mines more than once in two months. You mean when you have got a buddy, don't you?

A. I have a buddy always.

Q. 2. Don't you work in the shop some times without a buddy?

A. I work in the shop some. While we are off, I work in the shop and help repair cars.

Q. 3. You do that a good deal, don't you?

A. Yes, some times when my buddy is inside, I work out there. It's according to how rush the work is.

Witness stands aside.

OFFER IN EVIDENCE

By Col. Harris: If the Court please, the defendants want to introduce certain rules from a book on the back of which is printed:

"Jewell Ridge Coal Corporation

Special Rules

For the Safety and Operation of Mines

Adopted in Conformity with the Mining Laws of the State of Virginia (Sec. 1887-1)

Take Home and Study

October 1, 1940
Revised October 1, 1941."

[fol. 669] By the Court: Is there objection, gentlemen?

By Mr. Richardson: No, sir, we don't object unless there is some question of the relevancy. I don't know just what he wishes to introduce.

By the Court: In as much as the defendants desire to put certain rules in, will the plaintiff desire to put any in? My thought was if you do, let it be stipulated that the whole book go in, with each side introducing such rules as they desire to call particular attention to.

By Mr. Richardson: That's all right, sir.

By Col: Harris: Yes, sir.

The defendants, by counsel, thereupon offered in evidence certain rules from the book above referred to, and read the same to the Court, said rules being in the words and figures following:

"6. Do not practice any tricks, horseplay, wrestling, or throw any material whatsoever while in or about the mines.

"8. Do not ride on any trip except the man trip.

"9. Jumping on or off moving cars or motors is strictly forbidden.

"16. All employees, upon entering the mine, shall go directly to their working places (do not take short cuts over dangerous places); and no person shall be permitted to loiter in or about the mines, buildings, or machinery at any time. Loitering or sleeping around the sand house or sand drier is positively forbidden.

"20. Each employee, before entering the mine, shall deposit his check on a board provided for that purpose, or deposit check with lamphouse man. On leaving the mine each man must remove his check from the check boards. Failure to check in and out will be cause for discipline.

[fol. 670] "29. All man trips shall be handled with caution, and every foreman in the man trip shall be responsible for the safety of the men and see that all rules covering these trips are complied with.

"30. All man trips shall come to a full stop, and a signal shall be given by the official in charge of the man trip, before any one gets on or off.

"32. All men shall ride on the off side from trolley wire, and cars shall not be over-crowded.

"33. The speed of the man trip shall not exceed 6 miles per hour, and motormen shall keep trip in control at all times in order that he may stop trip within the length of itself.

"34. No man trip other than the regular man trip shall run except on orders from the Mine Foreman.

"35. Wrestling, throwing materials, or horse-play of any kind is positively prohibited on any man trip.

"36. One car in each trip will be designated as a tool car and all tools must be deposited in this car; no one shall be permitted to ride in this car.

"Penalty for failure to observe any of the above rules shall be:

1st offense—warning.
2nd offense—2 days lay off.
3rd offense—5 days lay off, or discharge.

"41. Each miner shall go directly to his working place, and on entering his working place he shall examine it carefully, take down all loose and dangerous roof rock with a slate bar or wedge, or make it safe by timbering, and otherwise make his place safe before proceeding with his work.

[fol. 671] "48. Never carry tools or other materials on your shoulder; they may come in contact with electric wires or loose pieces of roof and result in personal injury.

"53. Listen for motor and be in the clear when cars are placed at your working face. Do not stand or sit near a switch or curve when motor or cars are passing.

"81. Before beginning work on the track, trackmen shall examine the condition of the roof at the place where the work is to be done and make the same secure either by timbering or pulling down any loose slate that might be found.

"91. Do not work under exposed or bare power lines unless absolutely necessary.

"93. Do not leave a job until it is cleaned up or some arrangement made to have it cleaned up. Timbers must be set so as to give standard clearance on entries of not less than fifty-two inches and in rooms not less than forty-two inches on the clearance side.

"96. Examine and oil your motor before starting to use it, and see that all parts visible are in good condition. If motor is not in good condition, notify the Shop Foreman or Mine Foreman before taking it into the mine.

"113. An interval of at least five hundred feet shall be maintained between locomotives traveling in the same direction.

"118. Motormen at the end of the shift are instructed to take their motors to the motor barn and not to leave their motors until they can get to the barn; and there report any needed repairs to their motor. The practice of leaving motors in driftmouth, at sandhouse, or on main line, is positively prohibited.

[fol. 672] "148. From time to time during progress of the cut, the machine runner and helper must examine the working place to see that it is not becoming unsafe. If a dangerous condition arises, the machine man may add or set

additional timbers for his safety. If it is necessary to change or remove a timber while cutting, other timbers to take their place must be set under the supervision of a Foreman. Under no circumstances shall a machine crew continue to cut a place knowing that an unsafe condition has arisen. If it is a condition that cannot be corrected, remove the machine, if it is safe to do so, to a safe place and notify the Mine Foreman.

"163. It is the Foreman's and Assistant Foreman's first and unceasing duty to watch carefully and require employes under their supervision to strictly observe the Mining Laws of the State of Virginia and the Rules promulgated by the Jewell Ridge Coal Corporation for the purpose of avoiding injuries to employees. Any infraction of the law or of these Rules which you yourselves cannot remove must, without delay, be reported to the Superintendent. You must require strict obedience to your orders and enforce rigid discipline.

"171. Examine the place where the men leave their buckets, extra clothing, do their shooting, etc., and designate a safe place for the workmen to eat their lunches, and spend their spare time."

By Col. Harris: If we think of any others, we will call attention to them.

The rule book referred to was thereupon filed, marked as: [fol. 673] "Defendants' Exhibit I," and is returned as a part of this transcript.

By Col. Harris: We think that concludes our evidence, if the Court please.

By Mr. Richardson: If Your Honor please, we haven't our rebuttal witnesses here. We thought it would take all of the day for the defendants to conclude their testimony and expected to be in position to go ahead in the morning.

By the Court: I can appreciate that situation, and will look after you on it. I have to stop early today; I have two more cases to dispose of this afternoon. I take it you have no rebuttal you are ready to start with if the defendants now rest?

By Mr. Richardson: I am not sure. We might want something from Dr. St. Clair.

By the Court: We will take a recess now until twenty-five minutes to four.

Following the recess.

The Defendants here rested.

By Mr. Richardson: We would suggest, if it pleases Your Honor, to adjourn until tomorrow morning, at which time we will have such rebuttal witnesses as we require and we will have it so arranged that we can go through it very quickly.

By the Court: How quickly? What is your estimate of time?

By Mr. Richardson: Two or three hours.

And thereupon, at this time, Court adjourned until tomorrow, Wednesday, November 24th, 1943, at 9:30 A. M., at which time the trial of this case was resumed.

[fol. 674] And, Thereupon, the plaintiff, to further maintain the issues on its behalf, introduced the following evidence in Rebuttal, to-wit:

W. J. Elgin, a witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Richardson:

Q. 1. Your name is W. J. Elgin?

A. Yes.

Q. 2. You are a Mine Inspector for the Virginia Department of Mines, are you not?

A. Yes.

Q. 3. Where do you live?

A. Richlands, Tazewell County.

Q. 4. How long have you been a State Mine Inspector?

A. Since April, 1935.

Q. 5. Throughout that time, have you been familiar with the mining operations of the Jewell Ridge Coal Corporation?

A. I have.

Q. 6. Have you yourself examined the mines of this corporation?

A. I have.

Q. 7. About how frequently have you been in these mines?

A. I make them every ninety days or four times a year.

Q. 8. When you visit the mines to make an inspection, approximately how much time do you spend?

[fol. 675] A. Well, it depends on the size of the mine. These mines usually takes me ten to twelve days, the No. 1 Mine, and about the same at No. 2.

Q. 9. And that gives you an opportunity, does it, to go all through the mine?

A. That's my practice, to visit every working place.

Q. 10. And you have followed that practice?

A. I have.

Q. 11. I wish you would state, Mr. Elgin, whether in this Jewell Ridge Mine, you have observed evidences of supervision and care in the maintenance of the man-trip haulways?

A. Yes, I have observed—I make this examination of the haulways as well as the working places in my travels through the mines.

Q. 12. What has been your observation as to the attention given to the overhanging rock and other obstructions that might be there, constituting hazards in the haulway?

A. Well, at times I have found conditions of top that needed attention and called the foreman or safety man, who so happens to be with me, about that and it is passed on to those who have the job of removing that hazard.

Q. 13. Is it given prompt attention?

A. So far as I know, yes, it has been, and one or two times, a few times, I have made return trips to see that it was carried out.

Q. 14. And what have you found?

A. Usually it has been carried out pretty promptly.

Q. 15. What would you say as to the general condition [fol. 676] of the haulways, the man-trip haulways throughout these mines, for safety, as compared with the general standards which your Department upholds?

A. I think that those haulage roads of the Jewell Ridge Mine are really, I would say, as good, if not better, than the average of the Virginia mines, because, although they have bad top conditions some places, others the top conditions are exceptionally good, and the haulage roads are not hard to maintain. The normal hazards in the mine exists there

as they do in all mines, and that's something that has to be taken care of daily.

Q. 16. At places where there are bad top conditions, have you or not found evidence of proper attention given to those conditions for the safety of persons passing there?

A. As a rule, efforts to take care of those has been observed.

Q. 17. And those efforts are a practical and proper provision for the safety of the people?

A. Yes, I think they are.

Q. 18. What would you say as to the general sanitary or healthful condition of these mines?

A. I have never, I don't think, found a condition where you might say, on the traveling roads, where you would consider anything obnoxious. I have traveled lots of times through old work, which is one of my jobs, to make examinations of old works, and found where the men have used it for a toilet, but it is not in the usually traveled road. Occasionally, you will find where some man has gone ahead and [fol. 677] used a place that he shouldn't have on account of it being in proximity to the work, but he knows better than to do that. He knows he can go into places where it wouldn't get,—be obnoxious.

Q. 19. They are supposed to use the abandoned workings, are they not?

A. That's what they are urged to do.

Q. 20. No mines provide toilets or sanitary facilities other than what you find here, do they?

A. No, not any where near the working place. Some mines have such places, like shaft mines that I have seen them provided where they have running water; but not at the working places.

Cross-examination.

By Senator Muse:

Q. 1. Now, Mr. Elgin, when you make your inspection trips you make your report, I take it, of the inspection you have made?

A. Yes.

Q. 2. And call attention to the mine foreman and mine people at Jewell Ridge, in this case, as to conditions that you have found that needed correction?

A. Yes.

Q. 3. And you always find some condition that needs correction, I take it?

A. Absolutely, because you might pass through today and not find it and tomorrow you will find it. Those things are changing from day to day.

Q. 4. You have been going to Jewell Ridge since 1935, I believe?

[fol. 678] A. Yes.

Q. 5. I mean the two mines?

A. Yes.

Q. 6. And in the eight years you have been going to those mines, there hasn't been a single trip that you can now recall where you did not have some suggestions to make?

A. That's right.

Q. 7. And they dealt usually with matters of safety?

A. Yes, that's one of my main jobs, is to try to promote safety in the mines.

Q. 8. That's the prime purpose of your making the inspections?

A. Yes, sir, from two standpoints, the benefit of the operator and the men.

Q. 9. I am sure of that. And you make an inspection four times a year?

A. Yes.

Q. 10. So in the eight years, you have made approximately thirty-two inspections?

A. Yes, and two this year, which make it thirty-four.

Q. 11. And in the thirty-four inspections you have made in the last eight years, there has not been a single inspection trip in which you did not have recommendations to make as to safety?

A. That's right, sir.

Q. 12. Wouldn't those same conditions that you referred to in each of your reports be as apparent to a competent foreman in those mines as they would be to you? They could see it as well as you could, couldn't they?

[fol. 679] A. Yes, they could, and at the same time, a stranger going into the mines that didn't see those things every day, he is apt to observe things some times that a man that is accustomed to looking at things will pass over.

Q. 13. Is it the old principle of "Familiarity breeds contempt"?

A. That's it.

Q. 14. But if he were as careful as you are, the conditions that you report would be just as obvious to him as to you?

A. If he went through with the idea of making a safety inspection, they would.

Q. 15. Well, they have section bosses in each section,—I have heard of a mine superintendent, of a mine foreman,—all those men in that mine could observe the conditions that you call their attention to, couldn't they, if they would just look?

A. If they just centered on that one thing, yes.

Q. 16. It's a pretty important thing to center on, isn't it?

A. Yes, that's one of the various duties of a section foreman.

Q. 17. One of his important duties?

A. One of his important duties, there's no doubt about that.

Q. 18. You say when you make recommendations about dangerous conditions, when you go back, you find it has been remedied?

A. Yes, but another develops.

Q. 19. You say you usually found they had been remedied?

A. Yes, sir.

[fol. 680] Q. 20. You meant, I take it, that some times they had not been remedied?

A. That's right.

Q. 21. You meant that some times when you called their attention to a dangerous condition in your report, you went back and it hadn't been remedied, and you had to call attention to it again, I take it?

A. In the particular case, probably, I can't say right off the reel as to whether I found,—probably in a few instances, but usually it is a similar condition in another section of the mine that has developed.

Q. 22. And these worked out places that you had reference to that you went through, the air circulates through those worked out places, does it not?

A. Yes, those worked out places, if the mine is properly ventilated, the air from them is carried away from the working places rather than towards it.

Q. 23. I believe you said as a rule they make efforts to take care of the bad conditions at the mine?

A. Yes.

Q. 24. "As a rule,"—that implies to me that some times they don't; is that correct?

A. Well, I—I would say that I have found very few cases where it wasn't eventually. It may not have been taken care of very promptly.

Q. 25. Of course, a bad condition might eventually take care of itself, mightn't it?

A. It might but some times those things, in the routine, [fol. 681] if the condition is such that it is of immediate danger, I usually, it has been my practice to call attention to it, and have it immediately remedied. Sometimes these conditions are something that will develop into a hazard and should be taken care of, and, of course, some times those things are left to the routine work before they are, but I recall times when I have gone through and I have even shut sections down because there have been places in them that there were conditions there that I felt was hazardous to the travel of the men as well as the motors and I had them closed until they could be corrected.

Q. 26. I think I understand that you have, on occasions, at those mines found conditions you considered dangerous, and had them close the section down until it was remedied?

A. Yes, sir.

Q. 27. And they did it, when you told them to close it, they closed the section down?

A. Yes.

Q. 28. And that condition that rendered it so dangerous that you felt it was your duty to close the section down, and they followed your direction, didn't they?

A. Yes.

Q. 29. And those same conditions could have been observed by them without your calling their attention to it, if they had been careful, couldn't they?

A. Some times it has been a question of how recently that danger has developed, because I know cases where we passed under and examined the top and it seemed perfectly safe and come back in half an hour and it would be down. [fol. 682] Q. 30. That's not generally true?

A. No, I don't know that you could say it was generally true.

Q. 31. Certainly that condition that was so dangerous that you closed the section down was as perfectly obvious to them as to you if they had looked at it, isn't that true?

A. That's true.

Q. 32. I believe it is true, is it not, Mr. Elgin, that by reason of the constant passage of cars through the—loaded cars and empty cars and the vibration of those cars through the haulways, that those haulways are always dangerous, aren't they, the danger of having a slate fall and thereby requiring constant attention?

A. They do require constant attention. Of course, the change of seasons and the passage of the air creates a sudden hazard in the top and the vibrations, of course, it has its part to play, and for that reason, what you don't find today, you may find tomorrow. You have to consider that.

Q. 33. By a combination of those circumstances you have just described, it makes the main haulage ways constantly dangerous?

A. Yes, and for that reason they are usually brushing, what they call brushing, or taking down thise loose stuff.

Q. 34. That's done almost daily, isn't it?

A. Yes, they take it down daily in the average mine, and daily there is probably some of it develops.

Q. 35. And that's one of the reasons, the principal reason, isn't it, why travel inside the mine is more dangerous than outside, isn't it?

[fol. 683] A. Well, I don't know whether you can say that or not, because the record of accidents outside and inside would control that more than what I could say.

Q. 36. Based on your experience at either mine at Jewell Ridge, will you not agree that it is certainly less dangerous for a man to be outside with just the sky overhead, or clouds, whatever is up there, than on the inside?

A. Oh, yes, that's true.

Redirect examination.

By Mr. Richardson:

Q. 1. Have you, in your experience with this company, found the management cooperative with you?

A. They have been very cooperative.

Q. 2. And have they taken such measures as you have from time to time suggested, looking to the improvement of safety conditions?

A. I have felt that way, yes.

Q. 3. You have referred to going into the mines repeatedly and coming out with recommendations or sugges-

tions for safety. Did you ever go into a mine anywhere at any time without finding something to recommend for its improvement?

A. No, indeed.

Q. 4. Do you ever expect to?

A. No, indeed. It isn't humanly possible to make it Utopian.

Q. 5. And a perfectly safe mine would be something you wouldn't expect to find?

A. No.

[fol. 684] Q. 6. You referred to a shut down of a portion of a mine. You haven't had any occasion any time recently to shut down any portion of either of these mines, have you?

A. No, I have not.

Q. 7. If you have done so at all, it's been a long time ago?

A. Yes, some few years back.

Witness stands aside.

H. R. Lovell, another witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stuart:

Q. 1. You are Mr. H. R. Lovell?

A. Yes, sir.

Q. 2. Where do you live?

A. Jewell Ridge.

Q. 3. I believe you are General Mine Foreman of Mine No. 1 of the Jewell Ridge Coal Corporation?

A. Yes, sir.

Q. 4. What has been the length of your experience in the coal mining business?

A. Twenty-two years.

Q. 5. How long have you held your present position?

A. Nine months with this company.

Q. 6. Now, I want to ask you about the situation around the portal at the beginning of the shift. Take the morning shift. About how long before the man-trips start do the [fol. 685] men begin to gather around the portal?

A. Well, they start coming in about six o'clock.

Q. 7. And what do they do after they get in there, in a very general way?

By Senator Muse: It seems to us that this is part of the evidence in chief for the plaintiff and that they went into it with Mr. Hagy. It doesn't seem to us to be in the nature of rebuttal evidence.

By the Court: It might be rebuttal. I will admit it.

Q. 8. Are you present in the mornings before the man-trip starts?

A. Yes, sir.

Q. 9. What time do you get there?

A. Six o'clock. I try to be at the Mine Office at six o'clock every morning.

Q. 10. You say the men begin to get to the portal at about six. Are they required to be there at six?

A. No, sir.

Q. 11. Do all of them get there at six?

A. No, sir. However, they come in in cars at different times and from different directions.

Q. 12. They just gradually gather in?

A. That's right.

Q. 13. Those who get there say an hour before the man-trip is going to start that they are going to take, what do they do in that intervening time, how do they occupy themselves?

A. They get their lights and a bunch of them will get together probably around a fire, stove some place, or quite [fol. 686] a few of them come in the Mine Office, and they stand around and talk and do quite a bit of smoking, and you hear them talking about their work quite a bit.

Q. 14. For the most part, they are just killing time, are they not?

A. That's right, killing time.

Q. 15. Are they under any supervision during that period?

A. No, sir.

Q. 16. There has been some evidence in this case about certain preparatory activities that some of the company men do before they go in—for instance, the motormen, as to what they do with the motors, and some of the other company men, about getting supplies. I want to ask you think, with respect to the total time that the average man will stand around there before the man-trip starts, how much

of that time is occupied with these preparatory things that some of the company men do?

A. I would say at the most not over ten minutes.

Q. 17. That's the outside of what any man will take?

A. Yes, sir.

Q. 18. What would you say about the average amount of time—you have said that ten minutes would be the outside?

A. Well, I would say anywhere from three to ten minutes, just to take it for an average all the way through.

Q. 19. There has been some evidence to the effect that some of the company men at times carry heavy supplies that they are going to use to the man-trips and put them in the tool-car. What can you say as to whether that is required or by choice in any particular man himself?

A. Well, that's by his own choice.

[fol. 687] Q. 20. What other way could these heavy supplies be routed for him at the place where he is going to use them?

A. We have a supply crew at night and we deliver the supplies on the section when they are ordered for that section.

Q. 21. Do some of the men who need these supplies give their order the day before?

A. Yes, sir.

Q. 22. Take the brattice man, for instance, who is going to need a bag of plaster the next day, has he the right to give the order the day before?

A. Yes, sir, he has the right to give the order to the section foreman and the section foreman writes the order up for him and signs it and gives it to him, and therefore, we turn the order over to the supply man at night, the supply crew, and he delivers the stuff.

Q. 23. Where is the stuff delivered under those circumstances with respect to where the man is going to need to use it?

A. Well, the supply man would probably just have a point somewhere on the section where he would place that.

Q. 24. Why is it some company men prefer to handle their own supplies and take them in with them on the man-trip rather than give the order the day before and let the supply crew take them in?

A. He can get this stuff about where he wants it and he would rather load it up out there than to go inside and have to go to the motorman and look to see if he had it.

Q. 25. You mean if he takes it with him, he can see that the gathering motor delivers it right to the spot?

A. Where he will need it, that's right.

[fol. 688] Q. 26. Whereas, if it is taken in the night before, it will be put at some convenient place on the section, but not necessarily right where he is going to use it?

A. That's right.

Q. 27. Going back a moment to those preparatory activities that you were testifying about a few minutes ago that you spoke of taking anywhere from three to ten minutes on the part of the men who do them—are those activities under supervision?

A. No, sir, he just volunteers and wants to do it that way himself.

Q. 28. Take the motorman who is getting his motor ready, is he supervised when he and the brakeman are doing that?

A. That's always been the custom.

Q. 29. You don't understand the question. I am asking you when he does that, when he goes and prepares his motor, is he under the supervision of a foreman at that time who is giving directions about how to do it?

A. Yes, sir, he does.

Q. 30. How is that?

A. The dispatcher will probably want the motor out in front and he will have to tell this fellow how he wants him to switch it and get out of there.

Q. 31. Tell him how to get his motor out?

A. Yes, sir.

Q. 32. What I am talking about is the preparation of the motor for use, the sanding and oiling.

A. Whatever they do to the motor itself, as far as sanding and oiling, he is not under any supervision then.

[fol. 689] Q. 33. If the motor is at a particular point where, in order to get it into the mine it has to pass various other motors and maybe cars, he will have some direction about where to switch?

A. That's right.

Q. 34. That's what you are talking about as to direction?

A. Yes, sir.

Q. 35. These incidental things which you have described as taking anywhere from three to ten minutes as they have been done in recent months, state to what extent those same things have always been done during your experience in the coal mining business?

A. Well, my experience has been it has always been the custom for those things to be done.

Q. 36. Now, Mr. Lovell, there has been some testimony with respect to the safety of the top in the haulways where the mine cars operate in the No. 1 Mine. Have you personally any duties to perform with respect to looking after the safety of the top?

A. Yes, sir.

Q. 37. What are those duties?

A. I examine that top myself.

Q. 38. Are you in the mine every day?

A. Yes, sir.

Q. 39. Are marks some times made on the top to indicate what somebody has thought as to the location of a dangerous condition, chalk marks?

A. Sometimes they are and sometimes there isn't.

[fol. 690] Q. 40. Well, now, when those marks are found, what is done about them?

A. We examine the place and find out what's wrong about it and try to find out what the mark is doing on there.

Q. 41. And if you find that the condition is dangerous there, what do you do?

A. We remove the bad piece of slate.

Q. 42. If you find the condition there is no- dangerous, what do you do?

A. Well, sometimes rub the mark off and sometimes just leave it stay there.

Q. 43. In other words, you don't do anything if it isn't dangerous?

A. That's right.

Q. 44. No, if an inside worker observes a place in the top that he considers dangerous, what is he supposed to do about that?

A. He is supposed to report—if it is too bad, he can danger off, stop it.

Q. 45. What do you mean by dangering off?

A. Allow no one to go in under it until he has notified some one about the rock.

Q. 46. Where does that report go?

A. I get it.

Q. 47. When you get the report, what do you do?

A. I look at it and find out about the location of this place and examine it and send the slate men to remove the rock.

Q. 48. How soon do you do that?

[fol. 691] A. Well, if it is after I come out of an evening—however, I send some one, but if I am inside and through the day, I can possibly reach this point, I go myself.

Q. 49. Do you ever leave a report like that for days and weeks without acting on it?

A. I have examined the place.

Q. 50. Do you ever wait for days and weeks before going to examine it, or do you do it immediately?

A. I do it as quick as I can get to it.

Q. 51. How quick is that, in the ordinary course of work?

A. I can get to any point within that mine within a couple of hours, anyway.

Q. 52. Do you always act on such reports within twenty-four hours, or within twelve hours, or how much?

A. I would say within twelve hours.

Q. 53. If there is no particular urgency about the condition, you say the people who are on the ground are authorized to take care of it?

A. That's right.

Q. 54. Now, in addition to the inspection that you yourself make of these haulways, are there any others whose duty it is or part of whose duty it is to look after the safety conditions on the haulways?

A. Yes, sir.

Q. 55. Who?

A. The assistant foremen and the safty inspector.

Q. 56. What are the duties of the safety inspector?

A. He makes inspection of the mine for all safety view-[fol. 692] points that he can find, bad top or any other thing that may develop there.

Q. 57. Then have you got a crew called the "scaling crew"?

A. Yes, sir.

Q. 58. What does it do?

A. Those fellows go along and take the reports that come in through the day and take down brows and loose top and clean up dirty track and stuff like that.

Q. 59. What can you say about the relative safety of the top in the haulways where man-trips run as compared with the general safety of the top in the mine? What I mean is are these haulways where the man-trips run the safest or are they the most dangerous or are they average or what can you say about that?

A. They are the most safest haulage that we have.

Q. 60. What can you say about the track on these haulways where the man-trips run as compared with the general track through the mine, the track in other parts of the mine, as to where the best and safest track is?

A. The best track we have is on the main line.

Q. 61. About these chalk marks that are made on the roof, do these chalk marks always indicate somebody's suggestion of danger or are they made for other purposes?

A. Well, they are made for other purposes. Occasionally, you will find a tram motor crew on the main line, he will go along and make a mark with a piece of chalk for the distance of a certain number of cars from a switch where he was go-Ring to back the cars in, and when his locomotive got under that mark, he would know he had the full length of his trip in.

[fol. 693] Q. 62. Does anybody else use that kind of mark?

A. Yes, sir, the engineers sometimes do it.

Q. 63. Do people sometimes have a piece of chalk and make them?

A. Yes, they just have too much chalk and want to do a little writing.

Cross-examination.

By Senator Muse:

Q. 1. Mr. Lovell, did I understand that you estimate it takes an average of from three to ten minutes for the men to get themselves—to do what is necessary to get ready to go in on a man-trip? That was your average, I believe?

A. That's right, sir.

Q. 2. Of course, you have never timed it? That's your best estimate?

A. I have timed it, sir.

Q. 3. If you have timed it, explain why you put it from three to ten minutes, is the thing I don't understand, if it's an average?

A. Because they pick up these parts they talk about working with at different points around the portal.

Q. 4. I just don't understand properly. You mean that you take a certain classification—I may illustrate one, like the trackmen, ten minutes, and it would take another classification three minutes, and you are giving us the

least time and the maximum time; is that the way you are calculating it? I just don't know?

A. Yes, sir.

[fol. 694] Q. 5. This three to ten minutes is the necessary preparation that these various men do in order to get ready for a particular man-trip; is that correct?

A. Sanding the motor and oiling it would be.

Q. 6. Things necessary for them to do in order to be ready to get on a man-trip or go in the portal; is that what you mean?

A. Yes, sir.

Q. 7. So while it takes some of them as much as ten minutes to do the necessary things to go in the portal, it will take others maybe not but three minutes; that's what you mean?

A. Yes, sir.

Q. 8. Of course, you are excluding the time to get the lamps, because all of them get those?

A. Yes, sir.

Q. 9. That's in addition to getting the lamps, the necessary preparation such as getting tools and supplies and so forth to go into the mine?

A. Yes, sir.

Q. 10. Now, is it your opinion that the man—take a machine operator who uses the motor, and I believe some do use a motor; that's correct, isn't it?

A. Yes, sir.

Q. 11. You think it would not take him more than ten minutes to get approximately fifty pounds of bits, two gallons of oil, get his oil can with his two gallons of oil in it, and go get his motor from on the yard and do whatever switching might be necessary for him to get out?

A. I will say that he can do it in ten minutes.

[fol. 695] Q. 12. I hadn't finished yet—bring his motor up to the sand box and put whatever sand is necessary in each of the four sand containers, sand boxes on the motor, and oil his motor, and put his oil can on the motor, put his approximately fifty pounds of bits on the motor, and get up to the portal to go in—you think it will take him not more than ten minutes to do that?

A. That's right, sir.

Q. 13. If he goes down and finds he has half a dozen motors in front of him, and he has to shift those out, it is

conceivable that it might take more than ten minutes, isn't it?

A. I don't think so.

Q. 14. You don't concede that under any circumstances, regardless of the number of motors he had in front of him, it would take him any more time than that?

A. He might have half a dozen other machine men there helping him do that ten minutes work to get away from there.

Q. 15. And he might not?

A. That's right, but he will get away in ten minutes.

Q. 16. Regardless of what the situation is, he is going to get away in ten minutes?

A. Yes, sir.

Q. 17. I believe you say he has the assistance sometimes of switchmen in telling him where to put the motors around the yard?

A. That's right, or he calls the dispatcher and the dispatcher tells him where to put that motor.

Q. 18. And you are there to help him, too?

A. Yes, sir.

[fol. 696] Q. 19. And you render him such assitsance and give him such orders as you think necessary?

A. That's right.

Q. 20. You do that with all the men, of course?

A. Yes, sir.

Q. 21. That's what you are there for. And, of course, some of them who take in less would naturally take less time—those who do less before they go in take less time?

A. Yes, sir, they take less time if they want to go on, but probably they will wait and go with the fellow who has taken ten minutes.

Q. 22. So far as the supplies are concerned, you have the supply crew that will take in the heavy stuff for him, if he wanted them to?

A. Yes, sir.

Q. 23. It has been customary, though, for the nine months you have been there, for the men to take in their own supplies?

A. They don't take in all of them.

Q. 24. I didn't say all. I say it is customary for them to take in most of the supplies?

A. I wouldn't say they took most of them; they take some small amount that they can handle.

Q. 25. Can a man handle a two hundred pound keg of bolts?

A. Two of them can.

Q. 26. They do take them in, don't they?

A. Once in a while.

Q. 27. They take them whenever they need them?

A. We send them when we have reports on them at night.

[fol. 697] Q. 28. Has it been customary since you have been there for the men to take them in?

A. Not all of them.

Q. 29. All would be one hundred per cent. I mean usually?

A. Some fellow who chooses to take them himself might get a keg once in a while.

Q. 30. Most of them choose to do it, don't they?

A. No, sir.

Q. 31. Do you have a supply clerk there in the morning?

A. Yes, sir.

Q. 32. If it is customary for you to send the supplies in on the night shift, with the night crew, why do you maintain a supply man there in the morning?

A. To issue out supplies for our locomotives.

Q. 33. Anything else?

A. He works in the lamp house.

Q. 34. Does he issue out supplies to these men?

A. He is working both places.

Q. 35. Does he issue out supplies to these men?

A. Yes, sir, if he has orders for something after he issues the lamps out.

Q. 36. You take the bond man, how would you send the bonds where he wanted them with the night crew?

A. By him leaving a report as to where he wanted them.

Q. 37. Has that ever been done since you have been there?

A. I can't recall if it has.

Q. 38. You can't recall a single occasion during the nine months you have been there when you have sent any bonds in?

[fol. 698] A. It hasn't been customary to send these bonds in. That man distributes these bonds one at a time when he welds them on the rail.

Q. 39. So, in so far as that man is concerned, he carries his supplies in?

A. He carries a small amount. I would say at one time

he didn't carry over twenty bonds.

Q. 40. How much will twenty bonds weigh?

A. I don't know.

Q. 41. You have some idea, don't you? Twenty would weigh about twenty-five pounds, wouldn't they?

A. At a rough guess. It would depend on the size of the bond.

Q. 42. Take the average size.

A. I don't know what they would weigh.

Q. 43. Do you think twenty pounds would be approximate?

A. Something near twenty pounds.

Q. 44. He also had the welding shield he takes in?

A. Yes, sir.

Q. 45. And he takes in the welding machine?

A. Yes, sir.

Q. 46. The welding machine weighs eighty pounds or thereabouts, at least, it is pretty heavy, isn't it?

A. I don't believe it will weigh eighty pounds.

Q. 47. I will take any number you say.

A. It might weigh twenty-five pounds. You get small ones and large ones.

Q. 48. I am not talking about the little bitty ones.

[fol. 699] A. I would say it won't weigh over thirty pounds at the most.

Q. 49. I won't take that. You say you examine the roof, if you have a bad report, as quick as you can get there, and that you get there within two hours?

A. That's right.

Q. 50. If you have a report about the roof over in Parallel, that's my favorite section, do you hustle yourself right over to look at it or do you wait until your routine takes you over there?

A. No, sir, I have the right to authorize the assistant foreman to go take care of that.

Q. 51. I am asking you what you do?

A. I go over to it myself.

Q. 52. Personally?

A. Yes, sir.

Q. 53. Do you go immediately?

A. Yes, sir.

Q. 54. You say it takes about two hours to get there. Do you walk or ride?

A. You can walk or either ride.

Q. 55. You could crawl, but how do you go?

A. Most of the time I ride.

Q. 56. Have you ever walked in your life from that portal to Parallel for the sole purpose of looking at a bad piece of roof?

A. Yes, sir, I have walked quite a few times through there and hunted for bad roof, and looked at it, too.

[fol. 700] Q. 57. I am asking you if somebody reported to you that there was a bad piece of slate in Parallel No. 1, and you left from the outside for the sole purpose of looking at it, if you ever walked over there?

A. No, sir, I never did walk through there and hunt for it.

Q. 58. When you have the report of the bad piece of slate in a particular section of Parallel, did you ever in your life time walk from the portal back there to look at it?

A. No, sir, I ride back there.

Q. 59. That's the thing I was trying to find out. That's all. Thank you, sir.

Redirect examination.

By Mr. Stuart:

Q. 1. Talking about these activities around the portal in the morning before the men go in, there are some men who have got these certain things to do that you have been asked about. Are there also some men who have nothing to do after they get the lamp but wait to get on the man-trip?

A: That's right.

Q. 2. Is that true of most of the men or just a few of them or what proportion?

A. Well, the most of them don't have anything to do.

Witness stands aside.

JOHN R. SHORTRIDGE, another witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

[fol. 701] Direct examination.

By Mr. Stuart:

Q. 1. Mr. Shortridge, where do you live?

A. Jewell Valley.

Q. 2. Are you employed by the Jewell Ridge Coal Corporation?

A. Yes, sir.

Q. 3. In what position?

A. General mine foreman in No. 2 Mine.

Q. 4. How long have you held that position?

A. A little better than three years.

Q. 5. How long have you been employed by the Jewell Ridge Coal Corporation?

A. About thirteen and a half years now.

Q. 6. Mr. Shortridge, I want to ask you about what is done around the portal of the mine in the mornings before the men go into the mines. To what extent do the men who get there in the morning report just barely in time to catch the man-trip? I mean by that, how many of them will get there just barely in time, what proportion, and how many will get there earlier, with time to spare?

A. That depends on the way the busses run.

Q. 7. Take them generally.

A. The men who live in the camp start coming about six-thirty and the men are coming up to the mines from there on up until seven-thirty, which is the time the man-trip leaves.

Q. 8. Your man-trip in Mine No. 2 leaves at seven-thirty?

A. That's right.

Q. 9. You are different in that from Mine No. 1, where [fol. 702] they leave at seven o'clock?

A. That's right.

Q. 10. The men who get in there before they have to start occupy themselves in what way?

A. They stand around and talk, just killing time.

Q. 11. Are they under any supervision?

A. No, sir.

Q. 12. Now, there are some of the company men who have occasion to take something into the mine with them, a motor, a bag of supplies, or something of that kind, and have to do something in order to be ready to go in with this additional equipment or supplies, whatever it is. Is that true of most of the men at Mine No. 2, or just a few or how is that?

A. Just a few of the company men.

Q. 13. Where there are supplies of any considerable weight that a man is going to need during his day's work,

what is the practice at Mine No. 2 as to how you get those supplies in there?

A. The heavy supplies are delivered the night before, such as bolts and spikes, five to twenty pounds, and nails, from five to ten pounds, the spikes would run from twenty to twenty-five pounds, that's not every morning, I would say about two or three times a week for each section.

Q. 14. If a company man is going to need during the day some bolts and spikes to the extent you have just talked about, how are those taken in?

A. Well, if he is taking them in in small quantities, he takes them in in the morning.

Q. 15. Where does he get them?

[fol. 703] A. At the supply house.

Q. 16. How close is the supply house where he gets them to the place where the man-trip starts?

A. Well, just a rough guess, I would say three hundred feet.

Q. 17. You heard Mr. Lovell, who just testified before you, you heard his testimony, did you?

A. Yes, sir.

Q. 18. You heard his estimate that those of the men, those company men who do have to get something additional to take into the mines with them, when they have to do that, would consume in that time between certain limits. That was the testimony at Mine No. 1. I want to ask you what that would be at Mine No. 2, where you are?

A. Well, it would be about ten minutes. I have never timed it but I would say ten minutes.

Q. 19. Are you talking now about the longest time or the average time?

A. I would say about the longest time. That's about the time it would take to get from the supply house to the portal.

Q. 20. Take a motorman who has to get his motor ready, how long does it take him to do the preparatory things before he is ready to start?

A. It would take, I would say, five to ten minutes to sand up and oil that motor.

Q. 21. What about getting in the clear so he could go in, would that take him any time always or sometimes, and if so, what would that time amount to?

[fol. 704] A. That's true; if there was something in his way, it would take him longer than ten minutes.

Q. 22. It depends on whether something is in his way and how much is in his way?

A. There may be another motor in his way.

Q. 23. Does he have to move that or the man that that motor belongs to move it, ordinarily?

A. The man that motor belongs to moves it.

Q. 24. What would he do while that man is moving it; would he just be waiting there?

A. Yes, sir.

Q. 25. Now, as to those preparatory things that some of the men do in—where they have to take equipment or supplies in, please state whether in the length of your experience, they are the same things which similar men similarly situated have always done; is that true or is it not?

A. Yes, that has been the practice since I have been with the company.

Q. 26. To avoid possible repetition, Mr. Shortridge, you heard Mr. Lovell's testimony about the reasons why some company men would prefer to take in some supplies rather than have them taken in the night before by the supply crew. You heard his testimony about that as to Mine No. 1. Now, state whether you have the same situation at Mine No. 2 or if not, state what the difference is in that?

A. Well, I would say it is practically the same. With a small amount of those small supplies, if you sent them in the night before with the regular supply crew, they [fol. 705] would put them down just any where on the section and that may not be the point where the man that is going to use them wants them, therefore, it is more convenient for him to take them in as he goes in the morning.

Q. 27. When he takes in supplies of any considerable weight or inconvenience with him in the morning on the man-trip, it is because he would rather do it that way; is that it?

A. That's right.

Q. 28. Now, Mr. Shortridge, about those chalk marks on the top as indicating places of danger, you heard Mr. Lovell's testimony about that so you know what I am talking about. What do you do, you personally, in Mine No. 2 about looking out for the safety of the top in the haulways where the man-trips run?

A. Well, I personally inspect all haulage in addition to the section foreman's inspection and the safety inspection. When those things are reported, I make it a point to

either investigate it myself or have one of my foremen, if it happens to be on his section, have one of the foreman do it and have it taken down immediately.

Q. 29. If a man reports a dangerous place in the top, how soon do you act on that report—I am assuming it hasn't already been taken care of, before the report comes to you?

A. Well, as a usual case, I think it is just about every case, I don't know of any other—those reports are usually made in the evening at the end of the shift like, when the man-trip comes out, and the section foreman or some one reports to me there is a dangerous piece of rock on the haulage, and we have a slate crew that we detail to go and take care of this.

[fol. 706] Q. 30. Suppose the place is one where the danger is immediate and you shouldn't wait until the end of the shift, what's done in Mine No. 2 about that, if anything?

A. If that is reported to me, I go immediately and investigate this trouble, and if I find that it, in my judgment, if it needs to be taken care of immediately, we go ahead and do so, otherwise, we wait until a convenient time, which would be the following night.

Q. 31. Is there any arrangement or practice in Mine No. 2 about handling a dangerous condition immediately by the people who are right there at the time?

A. Yes, sir.

Q. 32. If so, what is that?

A. On a section haulage——

Q. 33. Confine yourself now to the man-trip haulways. We are not interested in the working places or the sections.

A. That's taken care of the same way as the others.

Q. 34. Has the man who finds it got any authority to remedy it if he has anything to do it with?

A. If he is the section boss, he has authority to immediately take care of it, or if it is some one working for the section foreman, he reports to the section foreman.

Q. 35. Suppose a place is reported as dangerous and it is inspected by the section foreman and by you, but the section foreman doesn't think it is dangerous and you don't think it is dangerous, what is done?

A. There is nothing done.

Q. 36. About these chalk marks, what can you say about them?

[fol. 707] A. Well, all the chalk marks, whether they are made by chalk or paint, does not necessarily mean bad top.

The engineers that run these profiles and set the points has certain reference mark crosses. Some times these things may, you may think that it is bad top which it isn't, and, too, people have a habit of just marking the top. I know lots of times I have found marks and examined the top and found it perfectly solid, and on passing under it, well, you would think it was a bad top, because it had the sign on it.

Q. 37. Every time there is a chalk mark on the top, that doesn't mean that it is a bad top?

A. No.

Q. 38. What, in your opinion, is the relative danger of the top in the haulways where the man-trips run as compared to the danger in the other workings of the mine? I mean by that, are these haulways where the man-trips run the most dangerous with respect to the top of the least dangerous, or what can you say about that?

A. No, they would be the most safe, they are the most safest.

Cross-examination.

By Senator Muse:

Q. 1. Mr. Shortridge, what time do you usually get to work in the mornings?

A. About six-fifteen.

Q. 2. Why do you come to work so soon?

A. Well—I like to get up early.

Q. 3. The man-trips don't start in until about seven-[fol. 708] thirty, do they?

A. That's right. The man-trip leaves at seven-thirty.

Q. 4. How far is it from the lamp house to the supply house, approximately—about six hundred feet, isn't it?

A. No, I don't think it is that far. I think I made an estimate a while ago of about three hundred feet.

Q. 5. I didn't catch it. I am sorry. So the man who gets his lamp goes about three hundred feet if he has to go to the supply house; that's approximately correct?

A. Yes, sir, about that.

Q. 6. I believe you said that your company will send in the heavy supplies?

A. They do.

Q. 7. Does a track man carry some bolts with him?

A. Yes, small quantities.

Q. 8. How many pounds would you say?

A. It runs—it is ten pound orders.

Q. 9. Ten pound orders?

A. Yes, sir.

Q. 10. What else would the track man carry with him?

A. I suppose if he is going to take some spikes, he would carry some spikes, too, and his dinner bucket, too.

Q. 11. About that many spikes?

A. Yes, I would say about twenty or twenty-five pounds of spikes but as a general rule, he doesn't take both kinds of supplies at the same time.

Q. 12. Takes them only one at a time?

A. Some times it happens that he has to have both kinds [fol. 709] but as a usual thing it is only one kind of supplies.

Q. 13. Maybe he will take spikes today and bolts tomorrow or he might take both tomorrow or might not take either?

A. That's true.

Q. 14. They do get those supplies, the smaller quantities you refer to, at the supply house, of course?

A. That's right.

Q. 15. And the various types of men, the coal loader, if he has any of his tools that have to be repaired, he takes them in, of course?

A. Yes.

Q. 16. And the track man takes in whatever tools he needs?

A. The track man leaves his tools on the section.

Q. 17. He doesn't leave them all on the section, does he?

A. Yes.

Q. 18. How about the bond man?

A. I can't answer that. He doesn't work for me and I don't have him around the mine very often.

Q. 19. You mean he works in both mines?

A. Yes, sir, that's true. I haven't observed his actions. I don't know very much about him.

Q. 20. The wire man who works on the trolley wire, he takes in his supplies and tools that are necessary?

A. That's right.

Q. 21. He works all over the mine, so when the day is over he brings them out and takes them back in the next morning?

A. Yes, he takes his tools in and out, of course.

Q. 22. You heard Mr. Lovell testify about the activities [fol. 710] outside in the morning by the various ones before they go in the mine?

A. Yes.

Q. 23. The situation at No. 2 is about like he described it at No. 1, isn't it?

A. I would say it is similar.

Q. 24. There isn't any substantial difference, is there?

A. I don't remember all the details of his testimony but I would say they are similar.

Q. 25. You don't recall any difference in his testimony?

A. I don't recall any difference.

Q. 26. In so far as the cross-marks are concerned, of course, the cross-marks do indicate bad roof or that somebody thinks it is bad roof?

A. I don't know, not in all cases, it isn't true.

Q. 27. Wherever a man attempts to show a bad roof, he puts a cross-mark?

A. That's right, but every cross-mark don't mean a bad roof.

Q. 28. I understand—the engineering crew may put it there, but a cross-mark is used to indicate a bad roof?

A. Yes, sir.

Q. 29. And when you see a cross-mark there, you examine it or one of your men does, to see if there is a bad roof?

A. Yes, sir.

Q. 30. Do the engineers put the mark on the side wall or the roof?

A. On the roof.

[fol. 711] Q. 31. You attempt to fix a bad roof as soon as you can?

A. That's right.

Q. 32. You are very careful about that?

A. As careful as we can be.

Q. 33. And in spite of all you can do, some times you make a mistake of judgment when there is a cross-mark up there and there is a bad roof there?

A. I don't recall any case of that kind.

Q. 34. Do you recall Mr. Curtis Shelton, a few months ago, having his back broken or being severely injured by a slate fall in your Mine No. 2 where there was a cross-mark on the roof and the slate fell on his back?

A. I remember the accident and I did not see any cross-mark, and at the investigation of the accident, it was proved that there was no one knew the rock was even damaged.

Q. 35. Hadn't that rock been reported to you?

A. No, sir.

Q. 36. You had no knowledge of it?

A. No, sir.

Q. 37. How many section foreman do you have in that mine?

A. Ten.

Q. 38. All of them are charged with looking after the roof, aren't they?

A. That's part of their duty.

Q. 39. You have one scale crew, I believe, or do you?

A. Most of the sections have a slate man. His duty is to scale the roof, and take care of the slate.

Q. 40. How many of the slate men do you have?

[fol. 712] A. I don't know right off the reel.

Q. 41. Give me approximately.

A. I would say on the sections we have six or seven slate men.

Q. 42. You have ten section foremen and six slate men and you look after slate, too, you look around?

A. Yes, sir.

Q. 43. So I will put you down. That's seventeen. In spite of the seventeen men who look around at the roof, or are charged with the duty of looking around at the roof, that roof did fall on Mr. Shelton, didn't it, or the slate did?

A. That's right.

Q. 44. It fell on one of the haulage ways, didn't it?

A. This was in a place on a section.

Q. 45. Wasn't he a brakeman?

A. Yes, sir.

Q. 46. And it fell, where he got hurt was where the tracks went, wasn't it?

A. Sure.

Q. 47. It was a passage way, wasn't it?

A. Yes.

Q. 48. And it was a passage way over which a motor and some tracks did run?

A. Yes.

Q. 49. And it was a haulway, wasn't it, because they haul over it?

A. Well, that's true.

Q. 50. All right, sir. And in spite of your careful investi-
[fol. 713] gation, circumspection and observation, the roof did fall and the man's back was broken?

A. That's true.

Witness stands aside.

J. Howard Miller, another witness introduced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Richardson:

Q. 1. Will you give us your name, please.

A. J. Howard Miller, Jewell Ridge, Virginia.

Q. 2. What is your connection with the Jewell Ridge Coal Corporation?

A. Personnel manager.

Q. 3. How long have you been in the employ of that company?

A. Since April 15, 1936.

Q. 4. In your capacity as Personnel Manager, do you have charge of the compensation that is awarded to persons injured in the mining operations of the company?

A. That's right.

Q. 5. How long has the compensation been under your supervision?

A. Since April, 1943, this year.

Q. 6. How long have you had in charge the matter of looking into accidents?

A. Since January, 1940.

[fol. 714] Q. 7. Did you, in the year 1939, have any connection with that part of the affairs of this Company?

A. No.

Q. 8. Were you with them in the year 1939?

A. I was assistant foreman.

Q. 9. Who was in charge of the office that looked after accidents as reported?

A. A man by the name of Sam S. Clark.

Q. 10. Did you succeed to the office which he had?

A. Yes, sir.

Q. 11. Did you find and have you maintained the records which he kept in that office?

A. I have.

Q. 12. Since you came into that office in January, 1940, have you kept yourself fully informed of all accidents of any kind that occurred in connection with the operations of the Jewell Ridge Coal Corporation?

A. I have that.

Q. 13. Have you maintained full and complete records?

A. Yes, sir.

Q. 14. Does the company have any full and complete records of accidents which have occurred and injuries sustained by employees prior to January, 1939?

A. Not to my knowledge, unless they are compensable accidents.

Q. 15. Does it have detail records of all compensable accidents from that time?

A. Yes, sir.

[fol. 715] Q. 16. There has been some testimony in reference to an accident which occurred some years ago, causing the death of Tim Yeargain and Dominic Perechelli. Do you have any knowledge of that accident?

A. No, I do not, other than the compensation record on said accident.

Q. 17. Have you, upon request, dug back into the old records to find what you could about it?

A. Yes, sir.

Q. 18. Have you found a memorandum on that?

A. I did.

Q. 19. Who prepared it?

A. Mr. George W. St. Clair, at that time President of the Jewell Ridge Coal Corporation.

Q. 20. How do you know Mr. St. Clair prepared it?

A. By his signature attached to this report.

Q. 21. And do you know his signature?

A. Yes, sir.

Q. 22. That record was found in the files of the office which you now hold?

A. That's right.

Q. 23. I wish you would read into the record here what you found in that memorandum touching this accident.

A. (reading): Facts pertaining to the accident in which T. H. (Tim) Yeargain was killed. Accident occurred Friday night, September 26, 1930, between six and seven p. m. Tim was a member of a crew composed of Joe Smith, Foreman, Tim Yeargain, Dominic Perechelli and Al Freeman.

[fol. 716] This crew was going to South Main. Just before arriving at siding, and while on the main line, a gathering motor with five loads of slate got away from the motorman and a headon collision occurred. Joe Smith was injured as was Al Freeman, both getting scalp wounds. Both Dominic Perechelli and Tim Yeargain were killed.

Q. 24. From that memorandum, would you say whether that accident occurred in connection with a man-trip?

A. No, sir, I would not.

Q. 25. Did it occur on a man-trip or something else?

A. I would say it was a work-trip.

Q. 26. Mr. Miller, have you prepared a list of all compensible accidents which have befallen any employe of the Jewell Ridge Coal Corporation, either at the No. 1 Mine or the No. 2 Mine, from the first of January, 1939, to date?

A. I have.

Q. 27. In the first place, let me inquire if the company requires prompt report of every accident?

A. They do.

Q. 28. And to whom does such a report go?

A. The injured man is supposed to report within twenty-four hours to his foreman who is called an assistant foreman in the mines, or the section foreman, and they, in turn, make out their report, which is looked over and investigated both by the general mine foreman and by the Superintendent of Mines. That report is signed by these two men and then turned in to my office, from which we make our record. The injured man then goes to the doctor and he, in turn, makes out a report as to how the accident occurred and the nature of his injury. A copy of that also [fol. 717] comes to my office and we in turn, in our office, keep a case history card on each and every accident.

Q. 29. Upon receiving the report you have mentioned, do you look into the matter further?

A. Yes, sir.

Q. 30. Promptly?

A. Promptly on receipt of the accident report.

Q. 31. And as completely as may be necessary to inform you fully about the accident?

A. That's right.

Q. 32. You say you have prepared such a list. I hand you here a memorandum which purports to contain a list of compensible man-trip accidents, and ask you if this is a complete list prepared by yourself, showing all compensible

accidents which have occurred at any time to any employe of the Jewell Ridge Coal Corporation, on or in connection with man-trip movements from 1939 to date?

A. This is the list that I prepared, listing all the compensible man-trip accidents from January 1, 1939, until through October 31, 1943.

Q. 33. As to the year 1939, does that correctly reflect all of the accidents occurring on or in connection with man-trip movements as shown by the files in your office?

A. That's right.

Q. 34. And from January, 1940, to date, does it include all such accidents which have come to your attention in the manner you have described?

A. That's right.

[fol. 718] Q. 35. There are attached to this memorandum certain explanatory sheets, three in number, with notations and memoranda. Were they prepared by yourself?

A. Yes, sir.

Q. 36. Are they accurate and correct?

A. To the best of my knowledge and ability.

By Mr. Richardson: I regret that we do not have a copy of this paper. I shall submit it and ask leave to file it.

By the Court: Is there any objection?

By Senator Muse: No, sir.

The documents referred to were thereupon offered in evidence on behalf of the plaintiff, and were filed, marked as: "Plaintiff's Exhibit No. 45", and are returned as a part of this transcript.

Q. 37. Mr. Miller, I believe that this shows there have been in the four year period covered four compensible accidents connected with man-trip movements in the No. 1 Mine and two in the No. 2 Mine?

A. That's right.

Q. 38. Taking them altogether, how many man-trip movements are included in that report?

A. You mean consolidating the two mines?

Q. 39. Yes.

A. There has been 12,115 man-trips per compensible accident.

Q. 40. Do you mean there by man-trips, trips of cars in which men are riding or per individual man movement?

[fol. 719] A. No, trips of cars in which men have been riding, commonly known as man-trips.

Q. 41. Did you count the movement of the whole train of cars as one man-trip?

A. That's right.

Q. 42. And there have been 12,115 such man trips handled to each compensible accident?

A. That's right.

Cross-examination.

By Senator Muse:

Q. 1. As I understand, your records don't go back prior to 1938?

A. Nineteen and thirty-nine, including 1939.

Q. 2. From January 1, 1939?

A. That's right.

Q. 3. By the way, those two men who were killed that you referred to, could you tell by the report whether they were riding in one of the cars at the time they were killed or were they out standing on the track or walking on the track?

A. I understand they were riding in the car.

Q. 4. It is your understanding, is it not, that they were riding in one car that was being moved by a motor?

A. They had two cars, as I understand, riding in one and their tools in the other.

Q. 5. And they were killed by a collision between that movement and another one?

A. That's right.

[fol. 720] Q. 6. Now, Mr. Miller, the data that you have about the number of persons injured, you said the number of compensible accidents on man-trips for the period of time that your records show and that your exhibit shows, what do you mean by "compensible accidents" or "compensible injuries"?

A. Any accident in which the man who has been injured is paid compensation.

Q. 7. You mean any accident—your record shows any accident in which the employe on the man-trip was paid compensation under the Virginia Workmen's Compensation Law?

A. That's right.

Q. 8. Under the act, what is a compensible injury in so far as the loss of time is concerned?

A. Any accident that loses over seven days; the first seven days are not compensible.

Q. 9. Seven work days?

A. Seven days consecutively. Work days doesn't enter into it.

Q. 10. He has got to be injured to such an extent as not to be able to return to work in seven days?

A. That's right.

Q. 11. Suppose one of the man on the man-trip gets injured, gets his finger cut, and is able to return and does return to work in six days, does your record reflect that?

A. No, that's not a compensible accident.

Q. 12. And it is not reflected in your report, is it?

A. No.

Q. 13. That is true if you have a collision between two [fol. 721] movements, man-trips, and have a half dozen people injured, and they lose from one to six days, they wouldn't appear on that report, would they?

A. No.

Q. 14. So your report is confined to those people who were injured sufficiently bad to lose seven days from their work?

A. That's right.

Q. 15. What do you mean by a man-trip injury as distinguished from an injury that occurs in some other way?

A. An injury which occurs when a man is riding in what we commonly know as a man-trip. There are many ways in which he could be injured.

Q. 16. What do you understand a man-trip to be?

A. Any train of cars that carries the men from the portal to their working places.

Q. 17. Suppose the men are riding on the train of cars inside, but are not, at that particular moment going to their working place, would you include them?

A. How do you mean?

Q. 18. Take the two who were killed, these two were riding in a car and had a tool car with them and a motor collided with them. You expressed the opinion that you didn't think it was a man-trip. Tell us why?

A. They had this motor and car for their convenience in getting their tools to work.

Q. 19. Were they getting there at the same time the tools got there?

A. Yes, they used the car and motor in their work dur- [fol. 722] ing their hours of work.

Q. 20. They were going to the place of work, weren't they?

A. I don't know.

Q. 21. It looks like it from that report?

A. I still don't know.

Q. 22. But you do know the report says they had a motor, pulling two cars, and one was a tool car and the other car the men were riding in, and they had a wreck and the two men got killed?

A. Yes.

Q. 23. Still you express the opinion that it wasn't a man trip?

A. No.

Q. 24. Suppose a machine man who is using his motor going in in the morning to his place of work, he has a motor, and he has a wreck, would you consider that a man-trip?

A. No.

Q. 25. If he had a wreck, he wouldn't be on that report, would he?

A. No.

Q. 26. Suppose the drill crew, for instance, that has its own motor, while going in there to go to the place of work or coming out in the afternoon has a wreck, they wouldn't appear on that report, would they?

A. No.

Q. 27. How about a gathering motor that was hauling the men from the work room up to their powder house or man-trip station, would you consider that a man-trip?

[fol. 723] A. Just a single motor?

Q. 28. A single motor and a car that had some men?

A. If it was a car that had the men working on that section.

Q. 29. Where are the rest of the men. He has left half of them back in the section and put half in the car, would that be a man trip, in your definition?

A. That wouldn't be consistent.

Q. 30. You wouldn't consider that a man trip, would you?

A. Yes, that would be a man trip.

Witness stands aside.

The Plaintiff here rested its case.

The Defendants here rested their case.

[fol. 724] REPORTER'S CERTIFICATE

I, L. D. Wilmore, Shorthand Reporter, do hereby certify that I reported in shorthand the proceedings had and evidence offered and introduced on the trial of the case of Jewell Ridge Coal Corporation, a corporation, vs. Local No. 6167, United Mine Workers of America, et al., in the District Court of the United States for the Western District of Virginia, at Roanoke, and that the foregoing is a true and correct transcript made from my official notes taken at the time, and that the volume made a part of this transcript marked "Exhibits for Plaintiff and Defendants," contains the exhibits offered and introduced by both parties on said trial.

Given under my hand this 18th day of December, 1943.

L. D. Wilmore, Shorthand Reporter.

[fol. 725] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

ORDER—Filed November 25, 1943

Pursuant to the provisions of the pretrial order entered herein on the 5th day of November, 1943, on the 17th day of November, 1943, came the plaintiff and all defendants, by counsel; and thereupon, the issues to be tried in this action having been stipulated and agreed to by all parties hereto as set out in said pretrial order, and that the same be tried by the Court without a jury, the introduction of testimony was begun by the plaintiff and continued from day to day until, on the 30th day of November, 1943, the plaintiff concluded its testimony and rested its case in chief.

And thereupon, on the 22nd day of November, 1943, the defendants began the introduction of their testimony and, on November 23rd, 1943, completed the introduction of their testimony and rested their case in chief.

And thereupon, on November 24th, 1943, the plaintiff introduced its rebuttal testimony and rested its case, and both sides rested. And the Court, after full hearing of all

testimony introduced by all perties hereto, and the arguments of counsel for the plaintiff and for the defendants, not being fully advised in the premises, takes under consideration its judgment; and it is ordered that counsel for the plaintiff and counsel for Southern Coal Producers Association, *amicus curiae,* be allowed until December 20th, 1943 to file their briefs, and that counsel for the defendants be allowed ten days thereafter within which to file their [fol. 726] briefs; and that counsel for the plaintiff be allowed five days after receipt of copy of defendants' brief within which to file its reply brief, if it be so advised.

And it is further ordered that the clerk of this court certify and mail copies hereof to George Richardson, Jr., Esq., 506 Commercial Bank Building, Bluefield, West Virginia, and William A. Stuart, Esq., Abingdon, Virginia, attorneys for the plaintiff, to Crampton Harris, Esq., 1618-20 First National Bank Building, Birmingham, Alabama, Frank W. Rogers, Esq., 306-317 Boxley Building, Roanoke, Virginia, Leonard G. Muse, Esq., 306-317 Boxley Building, Roanoke, Virginia, and Welley K. Hopkins, Esq., United Mine Workers Building, 900 15th Street, N. W., Washington, D. C., attorneys for the defendants; and to Edward R. Burke, Esq., 515 Southern Building, Washington, D. C., and John C. Gall, Esq., 701 Southern Building, Washington, D. C., attorneys for Southern Coal Producers Association, *amicus curiae.*

Enter: (S.) A. D. Barksdale, District Judge.

[fol. 727] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

DEFENDANTS' REQUEST FOR FINDINGS OF FACT—Filed January 10, 1944

(A) General Description of Mines

Plaintiff operates two coal mines, one at Jewell Ridge and the other at Jewell Valley, both in the Western District of Virginia. Both are known as "drift" mines, because the seams of coal, which are approximately horizontal, lie at an elevation above the railroads that serve

them. The thickness of the seam at Jewell Ridge averages 44 to 54 inches (page 7). At Jewell Valley it averages 32 to 44 inches (page 72). The mines have operated for a number of years, so that the places where the coal is mined are at a considerable distance from the mouth or portal of the mines. At Jewell Ridge the distance from the portal to the various working faces varies from 4,250 feet to 25,960 feet (Exhibit 16). At Jewell Valley, the distance varies from 4,600 feet to 14,450 feet (Exhibit 25). Approximately 500 men are employed at each mine.

[fol. 728] (B) Haulageways

Tunnels, called "haulageways", run from the portal of each mine with lateral extensions to the working faces. The average height at Jewell Ridge is 60 to 65 inches for main haulageways and 46 to 48 inches for secondary haulageways (page 315). At Jewell Valley the average height is 48 inches on the main line and 42 inches on the secondary haulageways (page 316). In the lateral extensions the height in both mines is considerably less than on the main haulageways. In some places at Jewell Ridge a man can walk erect in the main haulageways, but practically nowhere in the lateral extensions or at all at Jewell Valley. An unballasted track of cross-ties and steel rails is laid along the floor of the haulageways. No walkway is provided. The track is cluttered with coal that drops from loaded cars. The haulageways are quite narrow in places, so that cars will not clear a man walking beside the track. Over the right rail going in is suspended from the roof an exposed electric trolley wire to furnish power for the electric locomotives or motors that pull the cars.

(C) Lights

Haulageways are partially lighted with electric bulbs fed from the trolley wire. It is not practicable to run the trolley wires up to the working places where the miners dig coal. The only light there is furnished by small electric headlamps worn by each miner and fed by a five-pound battery carried by him.

(D) Drinking Water

There is no water system in the mines. Each miner must take in with him enough drinking water to last him

during his shift, as the plaintiff does not provide men to carry water to the workers.

(E) Man-trips

(1) Composition

For the purpose of transporting underground employees between the portals of the mines and "man stations" in [fol. 729] the vicinity of their working places, the company operates "man-trips". The latter consist of empty mine cars hauled by an electric motor. These are the same cars used for hauling coal out of the mines and are not cleaned or protected from the weather before being used on man-trips. Except in a few places on the main haulageways at Jewell Ridge, the roof clearance is not sufficient to permit a man to sit erect while riding on a man-trip. At Jewell Valley and at some places on laterals at Jewell Ridge a person riding a man-trip must bend almost double.

(2) Operation

All man-trips originate at the main portal. Those going to the most distant sections of the mine leave first. At Jewell Valley a separate man-trip runs to each section. At Jewell Ridge the practice, at least until quite recently, was to consolidate for a portion of the journey man-trips going toward the same general location. These man-trips were hauled by the larger motors, called "main line motors". As branch haulageways would be reached, the cars of men and their tool car going to that particular section would be disconnected from the train. A smaller motor, known as a "gathering motor", would then take them to their destination. Just before the beginning of the trial the Jewell Valley practice appears to have been adopted at Jewell Ridge.

(3) Company Control

The company fixes the schedules for the man-trips. It designates the cars that go to the various sections and requires the men to ride in the cars designated. Each section foreman is on hand at the portal when the men report at the appointed time. He supervises the loading of the man-trips and rides in one of the cars going to his section. He is in complete charge of the man-trip and gives such orders

as he deems appropriate for the operation of the man-trip [fol. 730] and the safety of the men riding thereon. When necessary he discusses with the men the work that they have done or are to do and issues instructions to them concerning the places to which they shall go to work or the duties to be performed after reaching their working places. The speed of the man-trips, the order in which they enter and leave the mine, the directness with which they go to the several sections and their sidetracking to permit other trains to pass are all controlled by the company.

(F) *Travel Between Terminus of Man-trip and Working Places*

The termini of the man-trips are called "man stations". They are from time to time advanced farther into the mine as the working faces are driven deeper into the mountain. The distance from the man stations to the working seams varies from a few hundred feet to more than a quarter of a mile. This distance must be traveled by the men on foot, carrying such tools, supplies and equipment as may be necessary, and with their backs in a bent-over position in order to avoid contact with the low roof.

(G) *Necessity for Man-trips*

At Jewell Valley all underground workers board the man-trip at the main portal. This is also true at Jewell Ridge except as to 72 men. Of those 72, all except some 4 or 5 board the man-trip at other entrances that are more convenient to their homes but not accessible to the other men. Occasionally coal loaders working in sections nearest the portal will walk out if they happen to have "cleaned up" their rooms a good while before the scheduled departure of [fol. 731] the man-trip at the end of the shift. The use of the man-trips is necessary in the efficient operation of the mines in order to maintain the volume production of coal. They conserve the time and energy that would otherwise be expended by the men in walking such long distances under such difficult conditions; they prevent delays that would arise if the men were permitted to straggle in one by one; and they eliminate the danger and confusion of trying to operate trains while men were thus using the haulageways.

(H) *Hazards of Underground Travel*

(1) Generally

During 1941, the last year for which statistics are available, there were reported to the United States Bureau of Mines the following accidents to the 450,000 men then engaged in coal mining:

Fatalities	1,075
Permanent total disability	66
Permanent partial disability	1,960
Temporary disability	44,641
Total	47,742

On the assumption that those figures are representative, more than one out of every ten coal miner- suffers an injury by acident each year. Figures are not available as to the proportions of those injuries received by miners while traveling underground.

(2) In Plaintiff's Mines

No figures were submitted in the instant case as to the total injuries sustained by accident to underground workers in the plaintiff's mines. No record at all was kept by the plaintiff of accidents that involved the loss of less than [fol. 732] seven days' time. The defendants testified as to numerous accidents to men riding on man-trips. Few of them were serious enough to result in the loss of seven days' time. They were caused by slate falling from the roof, by collision with other trains or obstacles on the track, by contact with a trolley wire, by the breaking of the trolley wire and by the derailment of cars.

(I) *Routine of Cutting and Mining Coal*

(1) Entries and Rooms

The first coal that comes from a mine results from the driving of a tunnel that is to be used as a haulageway. This is constantly repeated as the haulageway is driven further into the mountain. From the haulageway are driven laterals, called cross-entries. These cross-entries give access to and form the boundaries of "rooms", from which all of the coal is taken except the pillars that are left to support the roof.

(2) Cutting

Between shifts the machine men make with an electric machine a cut six inches in height at the bottom of the seam and parallel to the floor, which cut extends across the width of the working place and back into the coal to a depth of six or eight feet. When the "loader" arrives at the beginning of his shift, his first task is to remove with a long-handle shovel the "bug dust" (kerf from the cutting machine). Next he uses a long auger to bore at the top of the seam holes to the same depth as the undercut. He then fills those holes with explosives. The force of the charge dislodges that section of the coal that has been undercut, pushing it down and outward. With pick and shovel the miner then proceeds to load into empty coal cars placed by gathering motors the coal thus shot down.

[fol. 733] (J) *Services Performed Before Reaching Working Places*

All employees perform some services for the company before reaching their usual working places. The amount and frequency of those services vary with the different classifications of employees.

(1) Machine Men

Some of the machine men use motors and others ride man-trips. They get two gallons of oil from the oil house, approximately fifty pounds of machine bits from the blacksmith shop and such other equipment as may be necessary, including at times rope, fingers for starting box and jack pipe.

The machine men who ride man-trips load these supplies and equipment onto the tool car of the man-trip that they ride. Those who have motors load their supplies and equipment onto their motors. But first they must get their motor out of the yard and switch it to the sand house, where they fill the four sand boxes and oil the motor. They then run their motors to their assigned places of operation in the mine. The process is reversed at the end of the shift.

(2) Trackmen

Trackmen get from the blacksmith shop such tools as may have been brought out for repair. If bolts and spikes

are needed, they get them in kegs weighing approximately two hundred pounds and load them into the tool car on the man-trip that they ride. Some of the trackmen take in steel crossties and once or twice a month a number of angle bars.

(3) Motor Men and Brakemen

Motormen and brakemen go through the same process of getting oil and sand for their motors as is described in connection with the machinemen in (1) above.

[fol. 734] (4) Brattice Men

Brattice men carry from the supply house to the tool car of the man-trip eight or nine pounds of nails and, as needed, cement, bolts, hinges, plaster and rolls of brattice cloth. The latter weigh between sixty and a hundred pounds.

(5) Wiremen

Wiremen load onto the tool car each day their usual small tools, Stilson wrenches, hammers, chain blocks, "come-alongs", wire splicers, drills, hack saws, hatchets, braces and bits, clip wrenches and bell wrenches. Copper wire in lengths of one hundred or more feet, blow torches and solder are taken in as needed.

(6) Bondman

The bondman gets from the supply house and loads into the tool car along with his pick some fifty to seventy pounds of bonds and several pounds of welding steel. Welding shields and welding machines are taken into the mine by him some three or four times a week.

(7) Coal Loaders

From the blacksmith shop the coal loaders get and take to the tool car some four or five times a month such of their working tools as may have been brought out of the mine for repair. These tools consist of picks, shovels, augers, breastplates, tamping bars, wedges, axes and saws.

(K) *Services Continue In Transit*

The loading of tools, equipment and supplies into a tool car or onto a motor for transportation into the mine is

merely the beginning of a continuous service. Each employee is charged with the responsibility of following through to its destination whatever he may have loaded into [fol. 735] a tool car or onto a motor. The men see that the tools, equipment and supplies are unloaded and in most instances themselves carry them to the place at which they are to be used. When the men do not themselves carry them, they personally see that they are brought to the right place. The reverse is true as to tools, equipment and unused supplies brought out of the mine. Motors are brought out of the mine at the end of each shift for the purpose of being sanded, oiled, and occasionally repaired. This, as well as the servicing of the motors outside the portal, is a substantial service for the benefit of the company.

(L) *Pay of Underground Employees*

Coal loaders and some of the machine men are paid on a tonnage basis. Their tonnage rates are fixed on the basis of the amount of coal that should be loaded or cut per hour spent at the working place. Other employees are paid on an hourly basis for the time actually spent at their assigned working places. None of the employees is paid for the time spent in travel between the portal and his working place, nor for pre-portal or post-portal services. For instance, the pay of the crew of a gathering motor does not start until they reach the section of the mine in which they operate at the hour designated for the beginning of the shift and ends when they leave that section at the hour designated for the ending of the shift. They receive no pay for the time spent or services performed in taking their motor in and out of the mine and oiling and sanding it outside the portal. None of the basic rates have been loaded to include pay for travel time, pre-portal services or post-portal services, as contended by the plaintiff.

(M) *Compensation for Accidents on Man-trips*

The Virginia Workmen's Compensation Act covers "injury by accident arising out of and in the course of the employment". Under this law the plaintiff company has consistently recognized as compensable injuries sustained by accident on man-trips whenever resulting in the loss of [fol. 736] seven days' time.

(N) *Negotiation of Contracts*

So-called basic contracts covering wages and working conditions for the coal industry as a whole are periodically negotiated between the international officials of the United Mine Workers and representatives of the different associations of coal operators. The provisions of those contracts are embodied in district agreements subsequently executed between district officials of the United Mine Workers and the district coal operators' associations, which district agreements include other provisions of district application not inconsistent with the basic contract. The district agreements are in turn subsequently embodied in a local agreement executed by the two local unions that are parties defendant and the plaintiff, which local agreements include other provisions of local application not inconsistent with the basic contract. There is no binding agreement between the plaintiff and its employees until this local agreement is executed (page 54).

(O) *No Contract Since March 31, 1943*

The last basic contract or national agreement became effective as of April 1, 1941, and expired by its own terms on March 31, 1943. A district agreement was subsequently executed by the district officers of both the international union and the association extending for the month of April, 1943, the district agreement that expired on the preceding March 31. The district extension agreement did not have the effect of extending the local agreement between the plaintiff and its employees because: (1) it was never ratified or adopted by local agreement between the plain- [fol. 737] tiff and its employees, and (2) the district extension agreement was predicated upon an express condition subsequent that was never performed, namely, the negotiation of a new contract that would be retroactive to April 1st, 1943. Without the consent of the defendants and over their objection, the War Labor Board undertook to issue directives extending beyond April 30, 1943, the terms of the agreements that expired on March 31, 1943.

(P) *Basic Contracts and NRA Code Provided Pay Only for "Hours of Labor"*

The basic contracts (Exhibits 7, 8, 9 and 10) covering the period since the NRA Bituminous Code provide pay

only for hours of actual labor: "Seven hours of laber shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places." The testimony for the plaintiff is that the language of the NRA Code and basic contracts prior thereto is similar, if not identical, except that the number of hours of labor constituting a day's work was changed from eight to seven during the existence of NRA. The testimony for the plaintiff is further to the effect that underground employees of coal mines in the United States were paid on this basis even before they were organized by the United Mine Workers of America. None of the basic contracts or other agreements define or even refer to *hours of employment.*

(Q) *Administrative and Contemporaneous Interpretation*

Shortly after the effective date of the Fair Labor Standards Act a group of coal operators wrote a letter (Exhibit 19) to the Wage and Hour Administrator charged with its enforcement expressing the opinion that the method of computing wages under the basic contracts was not in [fol. 738] violation of the Act. Houck, an official of the United Mine Workers of America, joined with the operators as a co-signer of that letter. In response thereto the Administrator issued an informal ruling (Exhibit 20) to the effect that the existing arrangement was "not unreasonable," a pronouncement for which there was no statutory authority. On November 3, 1943, Secretary of Interior Ickes in his official capacity as Solid Fuels Administrator entered into a contract with the United Mine Workers of America providing for the payment of underground mine workers throughout the United States on the basis of "hours of employment," i. e., from portal to portal. That contract was approved by the War Labor Board. It is a matter of common knowledge that since the conclusion of the testimony in this case the producers of seventy per cent of the coal of America, including some members of the instant *amicus curiae,* have agreed upon a new contract based on portal-to-portal pay, the effective operation of which new contract awaits only the approval of the necessary governmental agencies.

(R) *Portal-to-Portal Basis in Other Countries*

Coal miners in every civilized country of the world except the United States are paid on a portal-to-portal basis.

(8) *First Invocation of Statute*

Consistently with the contemporaneous construction placed upon the Fair Labor Standards Act by members of the industry generally, defendants did not assert their present contention that the Act is applicable to them until the wage conferences of March, 1943, shortly after the District Court had held in the Tennessee Ore case that underground travel time should be included within the hours of employment. At that conference representatives of the miners agreed to accept a general pay increase of $2.00 [fol. 739] a day to cover travel time.

Findings Requested by Plaintiff

In the foregoing paragraphs the attempt has been made to state all of the material facts of the case. The findings requested by the plaintiff are so interwoven with argument and legal conclusions that it is difficult to categorically answer them. The substance of the plaintiff's requested findings of fact has been above incorporated, in so far as they can be separated from argument and conclusions.

Respectfully submitted, (S.) E. Crampton Harris, 1618-20 First National Bldg., Birmingham, Alabama; (S.) Frank W. Rogers, 306-17 Boxley Bldg., Roanoke, Virginia; (S.) Leonard G. Muse, 306-17 Boxley Bldg., Roanoke, Virginia; (S.) Welly K. Hopkins, 900 15th Street, N. W., Washington, D. C., Counsel for Defendants.

[fol. 740] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law—Filed January 25, 1944

STATEMENT OF THE CASE

This is a declaratory judgment action instituted by Jewell Ridge Coal Corporation, the owner and operator of two bituminous coal mines in this District, against two locals of the United Mine Workers of America and certain officials

and committee members thereof, District No. 28, United Mine Workers of America, and its officers, and International Union, United Mine Workers of America and its president. The two defendant locals of the Union comprise all of the underground mine workers employed by plaintiff, said two locals being within the jurisdiction of said District 28, said District 28 in turn being a component of the International Union, United Mine Workers of America. The complaint alleges, the joint answer of all defendants admits, and the evidence proves, the existence of an actual justiciable controversy between plaintiff and defendants as to the construction of Section 7 of the Fair Labor Standards Act. By pretrial order, it was stipulated that the issues to be now tried in this action are as follows:

"a. What constitutes the working time which makes up the work week of plaintiff's underground employees within the meaning of Section 7 of the Fair Labor Standards Act of 1938, and what amounts, if any, are due and unpaid to such employees under said Section, the determination of such amounts, if any, to be later [fol. 741] referred to a special master:

"(1) In reference to 'a' above, the plaintiff contends that such work week does not include that portion of the time spent by its underground employees in being transported or walking to and from their usual working places.

"(2) In reference to 'a' above, the defendants contend that such work week included all the time from the time such employees are required to report and do report for work at the portal of the mine until they return to the portal at the end of the shift, less the regular lunch period when they are relieved of all duties."

Neither side having demanded a jury, evidence adduced by both sides has been fully heard in open court by the court without a jury, oral argument has been heard, and briefs have been filed on behalf of both sides, and a brief has also been filed by Southern Coal Producers Association (of which plaintiff is a member), whose petition for intervention was denied, but which was permitted to participate as an *amicus curiae*.

This action having been tried upon the facts by the court without a jury, the court doth hereby find the facts specially and state separately its conclusions of law thereon, and directs the entry of the appropriate judgment, as follows, in conformity with Rule 52(a) of the Federal Rules of Civil Procedure.

Findings of Fact

Plaintiff, Jewell Ridge Coal Corporation, owns and operates two coal mines within this District, the older one being known as the "Jewell Ridge Mine" and the other being known as the "Jewell Valley Mine." The Jewell [fol. 742] Ridge Mine was opened in 1910, and the Jewell Valley Mine in 1936. Both mines having been in operation for a number of years, the coal now being mined is at a considerable distance from the drift-mouth or portal of the mines. Jewell Ridge being the older mine, the distances there are naturally greater, and vary from approximately 4,250 feet to 25,460 feet: at Jewell Valley, the distances vary from approximately 4,600 feet to 14,450 feet. Approximately 500 men are employed at each mine. Although there are slight differences, the methods of operating the two mines are substantially the same.

The coal which is mined at these two mines exists in seams, the thickness of which varies in the two mines from 32 to 54 inches. The main tunnels into the mines, from which coal has been extracted, are known as "haulage ways". From these haulage ways, laterals have been driven which are called "cross entries". These cross entries give access to, and form the boundaries of, "rooms", from which all the coal is taken except the pillars that are left to support the roof. Electric railways are operated for the removal of the coal when mined, and the men are also transported to and from their places of work on these railways. The company has numerous employees for the operation and maintenance of these railways and the electric power systems and the maintenance of safety within the mines, such as motormen and brakemen, trackmen, brattiemen, wiremen, and a bondman. These employees are all called "company men" and are paid at hourly rates. The employees who actually extract the coal from the seams, are known as "machinemen" and "coal loaders". The method is about as follows: Between shifts, the machinemen place their cutting machines at the

faces of the seams. Each machineman then makes a cut or kerf, approximately six inches in height, at the bottom of the seam of coal and parallel to the floor, which cut extends across the width of the room or working place and back into the seam to the depth of six or ei-*th* feet. The fragments from this cutting, called "bug dust", are first removed by the "coal loader" when he begins his work, by means of a long-handled shovel. The loader then bores [fol. 743] holes at the top of the seam of coal to the same depth as the undercut. He then places explosives in these holes and fires them. These explosions dislodge the entire section of coal which has been undercut, pushing it down and outward. The loader, with his pick and shovel, then proceeds to load the coal thus shot down, into empty coal cars placed adjacent to his work place by operators of gathering motors. The coal is then hauled out to the tipple, processed, graded, and ultimately loaded into railway cars for shipment. All coal loaders, and ordinarily, the machinemen, are paid upon a piece-work basis, that is, at an agreed rate for each ton of coal. The hours of labor of these piece-work employees are, however, important, because they are paid a time-and-a-half rate, or more accurately, a rate-and-a-half rate, for coal extracted by them after the expiration of seven hours of labor.

All plaintiff's employees are required to be at their places of work, for the morning shift, at 8 o'clock, A. M. The men come from their homes to the mines in various ways. Some walk, some come in their own cars at their own expense. More than 400 come in trucks and buses operated for that purpose by the plaintiff company and certain individuals, the expense of such transportation being borne by the company. The employees arrive at the mines at various times, but each in time to board the "man-trip" which is to take him to, or near, his respective place of work. "Man-trips" are trips made by trains of mine cars drawn by electric locomotives for the purpose of transporting the underground workers to or near their respective places of work. Employees leave the trains at the "man-trip stations" which are nearest to their respective places of work, and walk the rest of the way.

Upon arrival at the mines, each underground worker first obtains his lamp from the company's lamp house near the portal, which is an electric light that has been charged

while the employee is off duty. Each underground worker carries with him such drinking water as he needs for the day, as well as his lunch.

After securing their lamps, various men do various things before taking the man-trip. Coal loaders, the most numerous class, do nothing, unless they have brought tools [fol. 744] out for repair. Some four or five times a month, they bring tools out for repair, and on such occasions they go by the blacksmith shop and obtain their repaired tools. The bondman, wiremen, bratticemen, trackmen, and such machinemen as ride man-trips, get such tools as they may have brought out of the mine from the tool house, and such supplies as they may need for the day, from the supply house, and load them into the tool cars of their man-trips. However, if these men so desire, they have the option to give their orders for supplies to the section foreman, and such supplies will be delivered on their section overnight by the supply crew. Some machinemen use motors, and those who do, get two gallons of oil from the oil house, approximately 50 pounds of machine bits from the blacksmith shop, and such other equipment as may be necessary, and load such supplies and equipment onto their motors. They get their motors out of the yard, switch them to the sand house, where they fill their four sand boxes and oil the motor. They then run their motors to their assigned places of operation in the mine. Motormen and brakemen go through substantially the same process of getting out their motors and oiling and sanding them, as the machinemen do, before proceeding in the motors to their places of work. These preliminary activities require variously from three to ten minutes.

As previously stated, "man-trips" are for the transportation of underground workers to or near their places of work. They are operated by, and at the expense of, the company. At the Jewell Valley Mine, all underground workers use the man-trips to travel from the main portal to their places of work; at Jewell Ridge, approximately 72 men enter the mine at places other than the main portal and catch the man-trips at some man-trip station inside the mine, or walk all the way to their places of work. Their lamps are brought to them by their section foremen. Transportation for employees by man-trips is necessary for the successful operation of the mines. They constitute a benefit to both employer and employees. They benefit the

company in promoting safety, orderliness and increased productiveness: they benefit the employees by saving their time and energy, and thus increase their productiveness. [fol. 745] Each man-trip is composed of a train of empty mine cars such as are used to haul coal, drawn by an electric motor or locomotive. The first car after the locomotive, is the tool car, in which is hauled all mining tools and supplies of the men who ride that man-trip. No one is permitted to ride in the tool car. Ordinarily, seven men ride in each of the other cars of the train, never more than eight. Each car is about 12 feet long and seven feet wide inside. The bottom, or lowest part of the car, is 2 feet, 6 inches, wide. Alongside of that area, and rising above it, is a sort of bench approximately 2 feet, 3¾ths inches, wide, and above that, rise the outside walls of the car to the height of 11 inches. Men riding in these cars ordinarily sit on the bench, or, where the top is low, in the bottom of the car. The man-trips are scheduled, those going the greatest distances leaving first, and an interval between trains of at least 500 feet is maintained. The movement of the trains is governed by dispatchers, and the speed of the trains is kept within a maximum of six miles per hour as nearly as practicable. Each man-trip is under the supervision of a foremen, who sees to it that safety rules and regulations are complied with. During the course of the man-trips, foremen occasionally give instructions to employees as to the work they are to perform at their working stations. Such instances are rare, as instructions are ordinarily and customarily given at the working place. No work or labor is required of employees while riding on man-trips, and supervision is limited to the enforcement of safety rules and regulations. Those riding on man-trips sit upright where the roof is high enough, but find it necessary to bend over where the roof is low. Riding on man-trips, while definitely not luxurious, is neither painful nor unduly uncomfortable, and is less hazardous than other phases of mining operations. All coal mining operations are relatively hazardous. During 1941, the last year for which statistics are available, there were reported to the United States Bureau of Mines, 47,742 accidents, of which 1,075 were fatalities. Assuming that 450,000 men were then engaged in coal mining, the reported accidents represent an accident of some character to more than one out of [fol. 746] every ten coal miners during that year. In view

of these statistics, and the number of men traveling daily on man-trips in plaintiff's mines, the injuries shown by the evidence to have been received by employees in plaintiff's mines on man-trips are surprisingly few in number and extent.

If Section 7(a) of the Fair Labor Standards Act requires inclusion of travel time as work time, many, if not all, of plaintiff's underground employees have not received all the compensation required by the Act.

Both plaintiff's mines, from the very beginning, have always been operated on the "face to face" basis. The "face to face" basis means that hours of labor are computed on the basis of work at the usual working places, and therefore excludes any consideration of travel time spent in reaching the usual working places and returning therefrom. The "face to face" basis is traditional in the bituminous coal mining industry in this country, and has universally been the basis for the determination of hours of labor therein for approximately the past fifty years. In England and Continental Europe, the basis has been "bank to bank", or portal to portal, or some modification thereof.

Plaintiff's employees were first organized and became members of the United Mine Workers of America in 1933 following promulgation of the NIRA Code of Fair Competition for the Bituminous Coal Mining Industry. This NIRA Code of Fair Competition was drawn up for the industry by representatives of the Union and the Operators, and was approved by the President of the United States. It provided for the "face to face" wage basis by the use of the following language:

> "* * *, and this means seven hours work at the usual working places for all classes of labor exclusive of the lunch period * * *"

Basic wage agreements were entered into by the Union and the Operators, as of April 1, 1934 (continued in effect by successive extension agreements from March 31, 1935, until October 1935), as of October 1, 1935, as of April 2, 1937, and as of May 12, 1939. All these agreements were the result of collective bargaining. The last mentioned agreement, as of May 12, 1939, to extend for a period of

[fol. 747] two years, was made when the Fair Labor Standards Act was nearly a year old and had been in effect for more than six months. Nevertheless, it, as well as the previous wage agreements, provided for the "face to face" wage basis, necessarily excluding all travel time from the work week. Also the last basic wage agreement reached by collective bargaining, dated April 1, 1941, to extend for a period of two years, provided for the "face to face" basis, in the familiar language of the preceding agreements.

Early in 1940 an investigation by the Office of Wage and Hour Administration of the operation of the Monroe Coal Mining Company in Pennsylvania was begun, to determine whether or not that company's operating practices complied with the Fair Labor Standards Act. In the course of that investigation, the investigator raised the question of whether or not underground travel time of employees must be included in the work week under the terms of the Act. After an extended investigation, the investigator made an exhaustive report in which he discussed at length the matter of travel time and stated as his opinion that the "face to face" basis, excluding travel time, was the proper one to be applied in the coal mining industry, but he indicated that if the rule as applied in the *Cornucopia Gold Mining Company* case were applied, the Monroe Company would owe its underground workers approximately $70,000.00.

This situation was brought to the attention of Mr. Charles O'Neill, President of the Central Pennsylvania Coal Producers Association and a Director of the Monroe Company. He in turn brought it to the attention of other coal operators and of Mr. John L. Lewis, President of the International Union, United Mine Workers of America. Thereafter, representatives of the coal operators and the United Mine Workers conferred from time to time with representatives of the Office of Wage and Hour Administration. Both the Operators and the Union officials were definitely opposed to any construction of the Fair Labor Standards Act which would require payment for travel time. On July 9, 1940, the members of the Appalachian Joint Conference Negotiating Committee, for the Operators, and Mr. Earl E. Houck, Director of the Legal Department, for the United [fol. 748] Mine Workers of America, jointly composed and sent a letter to Col. Philip B. Fleming, Adminstrator of the Wage and Hour Division, fully setting out their views

on the subject. Amongst other things in their letter, they said:

> "This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years, and is the result of collective bargaining in its complete sense.
>
> * * *
>
> "The uniform high rates of pay that have always been included in the wage agreement of the mining industry contemplate the employee's working day beginning when he arrives at his usual working place. Hence, travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898.
>
> "It is urged that any ruling requiring such a change in the custom, tradition and contract provision so as to change the work day from 'seven hours' work in the mines at the usual working places' to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States. Such a ruling, moreover, would establish such diversity of time actually spent at productive work as between different bituminous coal mines and within each mine that there would be no basis on which any general wage scales could be predicated, collective bargaining would therefore be rendered impossible throughout this industry, and the very purpose of the Fair Labor Standards Act would be defeated. In such an event, it would make necessary the reassembling of the Appalachian Joint Wage Conference and it would be faced with an issue that would be almost impossible of solution by agreement, resulting in an industrial conflict that could paralyze the nation. This would be a most unhappy result to flow from an act that was passed by the Congress to aid workers in industries that had unreasonably long hours and unreasonably low rates

of pay, as contrasted with the short hours and the high rates of pay in the bituminous coal mines. The great amount of money involved in the case of extra payment by the operators or the great changes that would be required in the rates of pay to the miners, should any change in the present contract be necessary by reason of a new standard for the measurement of time worked, is so serious that a negotiated adjustment would seem to be impossible.

"For the foregoing reasons, we believe that your Division should accept the standards of wages and hours of work, and the definition of working time, as set forth in the Appalachian Agreement (which embodies the custom and traditions of the bituminous mining industry), as complying both with the provisions of the Fair Labor Standards Act and of the Interpretive Bulletin No. 13, to the effect that 'reasonable standards agreed upon between the employer and the employee will be accepted for the purposes of the Act.'

"We therefore respectfully request that your Divi- [fol. 749] sion issue a supplement to Interpretive Bulletin No. 13, stating that the standard of wages and hours of work and definition of working time, set forth in the Appalachian Agreement, entered into on May 12, 1940, between twenty-three district associations of bituminous coal operators comprising the Appalachian coal producing area and the International Union, United Mine Workers of America, and the several district agreements based thereon, conform to and satisfy the requirements of the Wage & Hour Act."

By letter of July 18, 1940, from Co-. Fleming, Administrator, to Mr. Houck, Director of the Legal Department of the United Mine Workers of America, Col. Fleming, referring to Mr. Houck's letter of July 9, 1940, just referred to, said in part:

"In view of the circumstances which you describe in your letter, and in view of the special facts which were developed at conferences with representatives of the industry, it is our opinion that the practice of computing working time on a 'face to face' basis in the bituminous coal industry would not be unreasonable."

Promptly thereafter, Col. Fleming issued a public statement on July 27, 1940, in which he said in part:

> "In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that the practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening."

The Monroe Coal Mining Company case was then closed, and it was thus administratively determined that the provisions of the Fair Labor Standards Act did not require the inclusion of travel time in the work week of the underground employees in the bituminous coal mining industry.

The United Mine Workers Union has never in any way contended that travel time was work time under the Fair Labor Standards Act until the Wage Conference of March, 1943, and only contended for it then as an additional basis for its demand for a general wage increase to all mine workers, both inside and outside the mines. The 1943 demand of the Union, under the heading "Hours of Labor", for travel time, is as follows:

> "To conform with the basic and legal requirement for the industry, the maximum hours and working time provisions be amended to establish portal to portal for starting and quitting time for all underground workers."

[fol. 750] The succeeding demand, under the heading "Wage Rate Increases", calls for a two dollar a day flat wage increase "for all classifications of inside and outside day men", and equivalent increases for piece workers, and provides:

> "The increased rates include compensation to meet the portal to portal starting and quitting time."

Thus, the 1943 demand of the Union is actually a demand for a flat wage increase to all mine workers, whether or not

they spend any time traveling underground to their usual places of work, and not truly a contention that the Fair Labor Standards Act requires inclusion of the actual travel time as work time for those who have actual travel time underground.

CONCLUSIONS OF LAW

The crucial question which I now have for determination, as set out in the pretrial order, briefly stated, is whether or not the time spent by plaintiff's underground employees in being transported or walking from the portals of the mines to and from their usual working places, constitutes working time which must be included in the work week of plaintiff's underground employees by reason of the Fair Labor Standards Act of 1938.

The pertinent portions of the Act are as follows:

"Section 7:

"(a) No employer shall * * * employ any of his employees who is engaged in commerce or in the production of goods for commerce— * * *

"(3) for a work week longer than forty hours * * * unless such employee receives compensation for his employment in excess of the hours above specified, at a rate not less than one and one-half times the regular rate at which he is employed."

"Section 3:

"(g) 'Employ' includes to suffer or permit to work."

It will be readily conceded by all, that travel by employees from the portal to their places of work and return, is not for the pleasure, relaxation or amusement of the employees, but it is to be carefully noted that the question is not [fol. 751] whether it would be fair for the employer to pay employees for this travel time, or whether I think the employees should be paid for travel time; the real question is whether the language of the Act *requires* such payment. The language of the Act certainly does not in definite terms cover the question here presented. So it would seem advisable to look into the legislative history of the Act.

Legislative-History of the Act.

I can neither find, nor has anything been pointed out to me, in the legislative history of the Fair Labor Standards

Act of 1938, which indicates that it was the intent of Congress to make so radical a change in the wage structure in the bituminous coal industry as to require payment for underground travel time. It is idle to say that, because employees in other industries are compensated under the Act for travel time under various and diverse conditions and circumstances, underground employees in the bituminous coal industry under and by virtue of the Act, must be paid for travel time. Circumstances alter cases. Under some circumstances, travel time is work time: under other circumstances it is not. The bituminous coal industry is *sui generis*. Its problems have been before Congress for many years. It is one of the few industries, for the regulation of which special Acts of Congress have been passed such as the two Guffey Acts. It is a highly competitive industry. Not only is there competition between the individual coal operators: there is competition between the northern operators and the southern operators, and always there is the sharpest kind of competition between the producers of bituminous coal and the producers of other fuels such as oil and gas. These conditions and many others are important factors which must be regarded in making up a wage structure for the bituminous coal industry. And in this industry, the wage structure is of peculiar importance because the cost of labor makes up approximately two-thirds of the cost of the production of coal. Of course, the Fair Labor Standards Act applies to the bituminous coal industry, as it applies to all interstate industry, but in situations not precisely covered by the language of the Act, its legislative [fol. 752] history, as well as all the facts and circumstances, should be examined.

The first general regulation of wage and hour standards for private employment was embodied in the National Industrial Recovery Act. In the Bituminous Coal Code, adopted under the NIRA in 1933, travel time was definitely excluded, and the "face to face" basis was adopted by the following language:

> "No employee shall be required or permitted to work more than eight hours in any one day *at the usual working places* * * *" (Italics mine).

Similarly, in the 1934 amendment, it was provided that:

> "Seven hours of labor shall constitute a day's work, and this means seven hours' work *at the usual working*

places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piece-work basis; * * *" (Italics mine).

This Code remained in effect until 1935, when the National Industrial Recovery Act was held unconstitutional.

In 1937, fair labor standards bills were introduced in both Houses of Congress, and extensive committee hearings were held on these bills. Mr. John L. Lewis, President of the United Mine Workers of America, testified at length, and at no time indicated that travel time should be included as work time. On the contrary, he indicated that he did not expect the bill to affect the coal industry. The following excerpts are from his testimony:

"Senator LaFollette. * * * As I understand it, the objective of this bill as outlined in Section 23, one of them is to prevent the board from going in and upsetting collective bargaining agreements or entering the field where collective bargaining is actually functioning in a bona-fide manner, and thereby producing the result of the action of the employer and employee represented by genuine and effective labor organization." (Page 280).

"Mr. Lewis. * * * For instance, frankly I would not want this bill to convey power to a board to order an investigation into all of the wage agreements in the mining industry right now, or to give the board power to decide that the collective-bargaining agreements in the mining industry were not sound, not proper, were confiscatory, or not in harmony with the facts of the industry and order a modification thereof. I think the power of the board should be limited to cases which run below the level of the standards fixed by Congress. I see endless confusion in the adoption of section 5 now. I see a drift toward the complete fixation of wages in all industry by governmental action." (Page 281).

"Senator Holt. Would you favor allowing the board to investigate collective bargaining agreements where the collective bargaining agreement was beyond the wage level?

"Mr. Lewis. No; I see no point in it.

[fol. 753] "Senator Holt. If they have a right to investigate collective bargaining agreements below the

wage level why should not they have the right to investigate collective bargaining agreements above the wage level?

"Mr. Lewis. Merely because their right of investigation of agreements that were substandard would be for the purpose of ascertaining whether that was so and of modifying them to meet the congressional standards." (Page 297).

Excerpts from "Joint Hearings Before the Committee on Education and Labor, United States Senate, and the Committee on Labor, House of Representatives, June 2-22, 1937."

In its report on an amended bill in the nature of a substitute, the Senate Committee on July 6, 1937, said:

"The right of individual or collective employees to bargain with their employers concerning wages and hours is recognized and encouraged by this bill. It is not intended that this law shall invade the right of employer and employee to fix their own contracts of employment, wherever there can be any real, genuine bargaining between them. It is only those low-wage and long-work hour industrial workers who are the helpless victims of their own bargaining weakness that this bill seeks to assist to obtain a minimum wage."

(Senate Report No. 884, 75th Cong.)

During the debates on the bill, numerous statements were made indicating that it was not the intent of Congress to interfere with the process of collective bargaining. The following are of interest:

"Mr. Walsh. Next, does the bill affect collective bargaining agreements already made or hereafter to be made between employer and employee?

"Mr. Black. It does not". (Senate, July 27, 1937. Congressional Record, Vol. 81, p. 7650.)

"Mrs. Norton. * * * It is not the intention of this amendment, or of the bill, to start fixing wages in all industries but only in those in which oppressive wages are being paid to a substantial portion of workers * * *" (House, December 13, 1937, Congressional Record, Vol. 82, p. 1391.)

"Mr. Randolph. * * * It (the bill) is not concerned with that fortunate majority of the laboring classes whose collective bargaining power is sufficiently potent to insure the preservation of their industrial rights.

"But it is concerned with those millions in industry who are unprotected and unorganized. * * *" (House, December 13, 1937, Congressional Record, Vol. 82, p. 1395: Parenthesis supplied.).

[fol. 754] "Mr. Curley. * * * There is no conflict of jurisdiction under the provisions of this fair standards of labor bill, and the existing labor organizations of this country. The bill concerns only of relieving the paralysis which, at present, shackles misery and poverty to millions of heads of families, who are underpaid and causing a colossal financial loss in purchasing power because of existing deplorable conditions." (House, May 23, 1938, Congressional Record, Vol. 83, p. 7283.)

"Mr. Boileau. * * * What is more, we are preserving for organized labor its right to bargain collectively and it will bargain for a higher wage than that." (House, May 23, 1938, Congressional Record, Vol. 83, p. 7290.)

"Mr. Allen. * * * This bill has a threefold purpose as I see it. First, it eliminates sweat shops * * *. The bill does not affect organized labor, but those 5,000,000 American working men and women who have not yet been benefited by organized labor." (House, May 23, 1938, Congressional Record, Vol. 83, p. 7291.)

"Mr. Fitzgerald. * * * I would have you observe that this proposed legislation will not improve the wages and hours of the majority of workers, nor does it attempt to. For I am greatly pleased to say that the majority of workers do not need this legislation because they are receiving a living wage and are not forced to work unreasonable hours." (House, May 23, 1938, Congressional Record, Vol. 83, p. 7310.)

Although the above statements were made at various times while the measure was being amended and revised, and therefore not with respect to the Bill in its final form, they show a continuing intention not to interfere with the processes of collective bargaining.

No such statute was enacted in 1937, and in regard to wage and hour legislation, in his message delivered on January 3, 1938, the President said:

> "We are seeking of course, only legislation to end starvation wages and intolerable hours; more desirable wages are and should continue to be the product of collective bargaining." (Congressional Record, Vol. 83, p. 9.)

Shortly before the passage of the Fair Labor Standards Act of 1938, Congressman Connery, on- of its patrons, said of it:

> "The thing to remember about this bill is that it is not designed to be a cure-all for industrial wages. It is merely aimed at wiping out sweatshop conditions and child labor. Those are tha two salient features and should be kept in mind." (House, May 23, 1938, Congressional Record, Vol. 83, p. 7322.).

Thus, it seems to me clear that it was neither the intent of Congress nor the desire of the Union, in the enactment of the Fair Labor Standards Act of 1938, to interfere in any [fol. 755] way with the wage structure of the bituminous coal industry. A statement made by Major Percy Tetlow, an official of the International Union, United Mine Workers of America, who testified in this case, seems to bear out this conclusion. He said:

> "No, the miners' organization has always taken the position that the question of wages, hours and conditions of employment should be governed and controlled by agreements under collective bargaining in the industry more so than by legislation. We have always taken the position that any legislation which will improve standards of working men and women,—to favor it and foster it and support it. Fundamentally, we are opposed to legislation that controls the daily wage and conditions of employment. We think that is a relationship that should exist between employer and employee."

The Administrative Ruling

The fact that the precise question here presented has been investigated and ruled upon by the governmental ad-

ministrative agency charged with the enforcement of the Act, seems to me to be of paramount importance.

The evidence in this case shows beyond question that in July 1940 the Administrator of the Wage and Hour Division, Department of Labor, ruled that travel time of underground workers in the bituminous coal industry was not work time within the purview of the Fair Labor Standards Act. There is no suggestion that there has been any modification of this ruling. The Administrator was invited by plaintiff to intervene in this action, of which invitation he must have been aware, as his Regional Attorney was present in court throughout the trial and also attended the pretrial conference. I must therefore assume that the Administrator did not wish to retract or modify his ruling of July 1940.

Of course, an administrative ruling does not have the force of law. In one instance, where I was satisfied that an administrative ruling was plainly wrong, I declined to follow it. *Magann* v. *Long's Baggage Transfer Co.*, 29 F. Supp. 742. However, as to such rulings, the Supreme Court [fol. 756] has said:

> "In any case such interpretations are entitled to great weight. This is peculiarly true here where the interpretations involved 'contemporaneous constructions of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new'."
>
> *United States* v. *American Trucking Associations*, 310 U. S. 534, 549.

> "* * *, it has been the settled law that when uncertainty or ambiguity, such as we have here, is found in a statute, great weight will be given to the contemporaneous construction by Department officials, who were called upon to act under the law and carry its provisions into effect, * * *."

National Lead Co. v. *United States*, 252 U. S. 140, 145. See also *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, *Securities Exchange Commission* v. *Associated Gas & Electric Co.*, 99 F. (2d) 795, 798; *Butte Miners Union* v. *Anaconda Copper Mining Co.*, 112 Mon. 372, 118 P. (2d) 148.

Consequently, I have generally followed such rulings. *Reliance Storage and Inspection Co., Inc.* v. *Hubbard*, 50 F. Supp. 1012, 1014.

It seems to me that this particular administrative ruling is entitled to even more than the "great weight" to which the Supreme Court said such rulings were entitled generally, by reason of the thoroughness with which the Administrator went into the question before making his ruling. It appears from the evidence that the question first came to the attention of the coal operators through what was probably a routine investigation of the operating practices of the Monroe Coal Mining Corporation in Pennsylvania, made by a representative of the Wage and Hour Division to determine whether or not this company was complying with the Act. After a thorough investigation, this investigator reported that in his opinion, travel time in the bituminous coal industry would not be considered as work time, but that, as travel time had been counted as work time in metal mining in the consent decree entered in the *Cornucopia Gold Mining* case, possibly it would be necessary to count travel time as work time in the bituminous coal mining industry. Upon learning of this situation, high officials of the coal operators associations took the matter up with the presi- [fol. 757] dent and high officials of the United Mine Workers of America, who all agreed, apparently without dissent, that the Act did not require the inclusion of travel time as work time, and that the administrator should so rule. Representatives of the operators and of the Union expressed this view to various representatives of the Wage and Hour Division, and finally to the Administrator, Colonel Fleming himself. Colonel Fleming "indicated that if in this long period of collective bargaining in the mining industry that that (the face-to-face basis) was the basis upon which payment for work was agreed upon, that there wasn't any reason why he should wish to disturb it. He said that he felt that a *bona fide* arrangement of that kind of history of fifty years, certainly ought not to be disturbed, particularly after the description we had given him of the disturbance that would be occasioned in the industry by any such revolutionary change in its wage structure." However, Colonel Fleming did not then make a ruling, but referred the representatives of the operators and the Union to the Regional Director of the Office of the Wage and Hour Division in Philadelphia and his attorney. After conferring

with these officials, the representatives of the coal operators and the Union wrote and delivered the letter of July 9, 1940, quoted from in my findings of fact, and which is generally referred to as the "Houck letter." Then, after receiving a report of this conference, Colonel Fleming made and announced the administrative ruling that in the bituminous coal industry, the Fair Labor Standards Act did not require the inclusion of travel time of underground workers as work time.

I do not find anything in this record which satisfies me that this ruling was plainly wrong: in fact, I find nothing which casts doubt upon its correctness. Giving to it the "great weight" to which the Supreme Court has said it is entitled, it is my conclusion to follow and sustain this ruling.

[fol. 758] *Case of Tennessee &c. v. Muscoda &c.*

Defendants principally rely upon the case of *Tennessee Coal, Iron & Railroad Co. et als.* v. *Muscoda Local No. 123, et als.*, (5th Circ.), District Court, 40 F. Supp. 4, Circuit Court, 135 F. (2d) 320, and on rehearing, 137 F. (2d) 176. This also was a declaratory judgment action, for the determination of what constituted the work week of underground iron ore miners under the provisions of the Fair Labor Standards Act of 1938. The District Court considered separately whether—

(1) The time spent on the surface in obtaining and returning tools and equipment,

(2) travel time from the portal to and from the usual places of work, and

(3) the lunch period,—

constituted working time within the meaning of the Act, and concluded that (1) the time spent on the surface in obtaining and returning tools and equipment, and (2) travel time from the portal to and from the usual places of work, must, under the Act, be included in the employee's work week, and that (3), the lunch period, did not constitute working time and need not be included in the work week.

On appeal, the Circuit Court (one judge dissenting) affirmed as to (2) and (3), but reversed as to (1).

At the outset, it is interesting to note that the majority of the Circuit Court, especially in the opinion on rehearing,

strictly confine their holding to the particular circumstances of that instant case, and that the majority holding was merely a refusal, "because not clearly erroneous, to set aside a finding supported by evidence as to what constituted working time of employees in the particular circumstances." (p. 183.) The Court said (p. 183):

"In a supplemental brief, one of the appellants says that the effect of our decision, the plain and definite holding of the majority, is that as a matter of law the time consumed in traveling from the portal of the mine to the face and in returning therefrom to the portal 'must be included in the working time that makes up the work-week of every ore-mining employee within the meaning of Section 7 of the Fair Labor Standards Act.' We did not so hold, and such should not be the effect of our decision.

[fol. 759] "We have written in vain if our opinion is to be interpreted as providing a rigid definition of working time, or as upholding the portal-to-portal theory as a matter of law, or as denying the principle that *in close cases it is well to afford the fullest possible scope to agreements among the individuals who are actually affected.* The evidentiary value of such agreements in relation to working time is for the jury or other factfinding tribunal. We have expounded no rigid definition of working time.

"The Act fails to provide one, and we should not do what was deemed unwise to do by legislation. The Congress probably failed to define working time for the same reason that it refrained from attempting to define the regular rate of pay, namely, 'because the employment relationships to which the Act would apply were so various and unpredictable'.

"Appellants sought by declaratory judgment to obtain a rigid definition of working time favorable to them. They now chide us for laying down such a definition against them. We do not do either; *we merely refused, because not clearly erroneous, to set aside a finding supported by evidence as to what constituted working time of employees in the particular circumstances.* The Act of Congress in this respect differs from the legislation of those mining states that limit worktime in underground mines to eight hours per day

and that include in this reckoning all time spent underground." (Italics mine).

Defendants do not here contend that lunch time is working time. They do contend that working time for the underground employees begins as soon as they are required to and do report at the portal, and continues until they return to the portal at the end of the shift, thus including all the time spent in obtaining lamps, tools or equipment, and other preparatory activities, as well as travel time.

As to the time spent in preparatory activities, estimated to consume here from three to ten minutes, I agreed with the majority holding in the *Tennessee* v. *Muscoda* case, *supra*, which is there set out as follows at page 323:

> "With respect to time spent by employees checking in and out and procuring and returning tools, lamps, and carbide, the case stands differently. It apears that the workers were obliged to furnish their own tools, lamps, and carbide, and were free to exercise their own judgment as to when, where, and how they should procure their equipment. The company merely instructed them as to the equipment needed, and did not attempt further to regulate the matter. The checking system used by appellants required the employees only to deposit a metal disc at the tally house when arriving for work, and to pick it up again at the end of the shift. In addition to the practical difficulties incident to the computation of isolated moments so elusive in character, we think these pursuits should not be computed as work-time, since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment."

[fol. 760] As to travel time, I do not agree that the majority holding in the *Tennessee* v. *Muscoda* case, supra, should be applied here, as contended by counsel for defendants. In the first place, the weight of the *Tennessee* v. *Muscoda* case, supra, is considerably lessened by strong dissent of Sibley, Senior Circuit Judge, in which, in part, he said:

> "'The Act does not define 'work time' or even 'work'. It may apply to each and every industry. What would be work in one industry may not be in another. It

seems to me that a man is at work, for the purposes of the Act, when he is doing what he is hired to do. It may involve mental or physical effort, or it may consist in simple presence. It all depends on the contract of hiring. The Act did not intend to upset and nullify the wage contracts of force in the various industries. It simply fixed minimum wages for work done under them, and maximum hours. Of course, contracts yield to the Act on these points, but they still control as to the work to be done, and the way it is to be done, and as to the scale of pay if not less than the minimum fixed by the Act. These things are left to bargaining, and especially to collective bargaining under the principles of the National Labor Relations Act, 29 U. S. C. A., Sec. 151 et seq.

"No question is older in such bargaining than the question whether 'travel time' is to be included in 'work time'. The worker has always thought he ought not to lose all of the time necessary to go to and from his place of work; the employer has thought he ought not to pay for time that produces no work results. The dispute has been resolved in various ways in employment contracts for pay estimated by the hour. Plumbers demand and get pay from the time they leave their places of business to go to a job until they return. Railroad trainmen get pay from the time they report for duty, no matter what delay may occur in the starting of the train. Railway trackmen also are paid from the hour of their assembly at the section point, though they may ride their motor car for miles before doing any track work. On the other hand, carpenters, masons and most artizans and laborers are paid for work only after they take up their tools on the job. As to coal and iron ore miners, traditionally they have been paid according to production, but their modern contracts have always included an express agreement as to their work time, and that agreement has excluded from work time the travel time in reaching the coal seam or ore bed, which were agreed to be the place of work. This is true of the collective bargains made by strong unions throughout the Appalachian region, as it is true of the bargains under which the miners in this case have worked. Their work time is agreed to be that spent at the ore bed. The employers' arrangement to get them

to that place reliably and safely is primarily for the benefit of the miner and is not work for the employer, according to these agreements. The discomforts and dangers of the trip, as well as the loss of time, are all considered in fixing the rate of pay for the work of extracting the ore, and the pay scales here involved are [fol. 761] far above the minimum fixed by the Act. The miner's work is hard and dangerous, but his pay is supposed to compensate for all this. If it would be better to include travel time in work time, it ought to be done by a new bargain in which rates of pay are also reviewed. If the change is to be by a special statute (some western States have such statutes), it will operate justly in future, and not by unexpected penalty, as here.

"There is nothing in the Act to outlaw agreements that travel time in getting to or from the agreed place of work is not work time. This is true though the employer may organize a means of transportation and make rules for its use. The agreements here that work time includes only time at the face of the ore bed are not illegal. Digging out the ore is what the miners agree to do, and for that they are paid. Getting their tools together and riding or walking to the agreed place of work is not, by force of any law work done for the mine owner. No one, I suppose, would say that if a group of miners who had spent an hour riding to work decided of their own will not to dig any ore and spent another hour riding back, they had done any work for which they should be paid by force of the Act."

However, conceding the correctness of the decision of the majority in the *Tennessee* v. *Muscoda* case, it seems to me that this decision is clearly distinguishable from the instant case and not in point here. In deciding the issue as to travel time, the District Court in its conclusions, and the Circuit Court on appeal, relied upon certain control-ing considerations.

First, there it appeared that the Administrator of the Wage and Hour Division, United States Department of Labor, had recently ruled that in the metal mining industry, travel time was work time, and furthermore, the Administrator there intervened and made substantially the same contentions as did the several defendants. Here, the situa-

tion is precisely the converse. In July, 1940, the Administrator announced his ruling that in the bituminous coal industry, travel time was not necessarily work time under the Act, and there has been no subsequent modification of this ruling. And as has been heretofore mentioned, although plaintiff in its complaint asserted that the Administrator was interested in the construction and application of the Act and invited his timely intervention in this action, the Administrator has neither sought to intervene nor appear as an *amicus curiae*, although his Regional Attorney was in attendance throughout.

Second, there it did not appear to the satisfaction of the court that by established usage throughout the industry, travel time was uniformly excluded from the work week. It does appear here, beyond any question, that travel time [fol. 762] has never been considered as, or included in, work time by anyone in the bituminous coal industry in this country. On the contrary, for certainly the past fifty years, the "face to face" basis has been universally recognized in the bituminous coal industry as the basis for computation of work time.

Third, there, the court concluded that, although it be conceded that recent wage contracts did exclude travel time from the work week, such contracts were not free and uncoerced agreements on the part of the mine workers, but reflected the dictation of the employers and the inability of the employees and their union to obtain recognition of their right, as repeatedly asserted and contended for, to be paid for their underground travel time. Here, we have the word of both the operators and the Union that as to the "face to face" basis, "This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years, and is the result of collective bargaining in its complete sense." On this point, an excerpt from the brief of counsel for the iron miners in the *Tennessee* v. *Muscoda* case, on appeal, is quite interesting (p. 59).

> "We are not trying the case of coal miners. We are not experts on coal mining. We do know that there are two great differences between the coal mining situation and the mining of iron ore in Jefferson County. *In coal mining we find a union which has been strong and*

powerful and which as a union has been engaged in collective bargaining with the coal operators over a long period of years. In our case we find the efforts of the men to organize their union presents a pitiable picture of helplessness against the domination of the mining companies. In coal mining the men work seven hours per day. At no point in the voluminous record created by the appellants do we find a single ore mining company offering to pay its men on a seven hour day." (Italics mine).

The record in this case by no means discloses "a pitiable picture of helplessness against the domination of the mining companies". On the contrary, the record here does disclose the picture of the "strong and powerful" union mentioned by counsel, which is able and willing, when it feels aggrieved, even in time of war, to paralyze the production of bituminous coal in this country by a strike or, in the euphemistic language of its members, "a work stoppage while awaiting a contract". It is hardly likely that such an union has been [fol. 763] coerced by the coal operators into waiving any valuable monetary right to which its members were entitled by law.

Fourth, there the court found that the underground travel was under conditions peculiar to the mining of iron ore which were replete with hazards, highly uncomfortable and requiring physical exertion, due largely to overcrowding of cars, and which were unpleasant and disagreeable because of bad odors, heat and poor ventilation, and were burdensome to those encountering them. Here, although I have not found that the "man-trips" constituted pleasure excursions, I have found no such painful and burdensome conditions as those described in the iron ore mines.

For the reasons set out above, it appears to me that the *Tennessee* v. *Muscoda* case is clearly distinguishable from the instant case, and should not govern, conceding that the *Tennessee* v. *Muscoda* case was correctly decided by the majority.

Other cases involving the question of travel time in other industries under various circumstances and in the light of various statutes have been cited and discussed by counsel for both sides. It does not seem to me that they are suffici-

ently pertinent to the particular situation here presented, to warrant a discussion of them herein.

Contemporaneous Construction and Agreements by the Parties

The proposition, that contracts made in violation of the Fair Labor Standards Act, or any other valid Act of Congress, are ineffective as against the Act, is too plain to require the citation of authority. And it is equally true that custom and usage, no matter of what long standing, cannot prevail against an Act of Congress. As well stated by counsel for defendants here, acts of Congress are frequently designed to change customs and usages which are deemed unfair, harsh or oppressive. Nor can contemporaneous understanding or constructions of the act by the interested parties alter its plain terms.

However, in this case, the plain terms of the Act do not cover the precise situation here presented. The question of when travel time is work time, and when it is not, is a question which may require a diversity of answers in diverse [fol. 764] situations, as pointed out by Judge Sibley in the *Tennessee* v. *Muscoda* case, *supra*, at page 323 thereof. It is quite true, as urged by defendants' counsel, that that which is plain requires no interpretation and presents no occasion for the use of extrinsic aids to its construction, but I cannot agree with their contention that the plain language of the Fair Labor Standards Act requires inclusion of travel time as work time. It seems to me that the language of the Act relied upon by defendants *quoad* travel time, falls far short of sustaining their contention in plain terms. In such a situation, it seems to me some of the very cases cited and relied upon by defendants' counsel recognize the principle that extrinsic aid should be sought.

> "Long continued practice and the approval of administrative authorities may be persuasive in the interpretation of doubtful provisions of a statute, but cannot alter provisions that are clear and explicit when related to the facts disclosed."
>
> *Louisville & Nashville &c. Co.* v. *United States*, 282 U. S. 740, 759.

> "The general rule is perfectly well settled that, where a statute is of doubtful meaning and susceptible

upon its face of two constructions, the court may look into prior and contemporaneous acts, the reason which induced the act in question, the mischiefs intended to be remedied, the extraneous circumstances, and the purpose intended to be accomplished by it, to determine its proper construction, but where the act is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given to it."

Hamilton v. *Rathbone*, 175 U. S. 414, 419.

In this case, more than 400 employees travel from their homes to the mines in trucks and buses operated by the company. If they are entitled to pay for the time spent in traveling from the portal of the mine to their usual places of work, might it not also be contended that they are entitled to pay for the time spent in travel from the points where they board the trucks and buses to the mines? If "surrender of freedom of action" be any criterion, as contended by defendants' counsel, do not these employees surrender their "freedom of action" when they become passengers on plaintiff's vehicles?

It does therefore seem important to inquire into the customs and usages of this industry, the contracts and agreements made between the parties, and the contemporaneous construction placed upon the Act by the interested parties. The evidence shows beyond question that, in the bituminous [fol. 765] coal industry in this country, for the past fifty years, travel time of underground workers has not been considered work time. By the NIRA Code for the bituminous coal industry, travel time was definitely excluded from work time. By the precise terms of all subsequent contracts between plaintiff and defendants, and between employers and employees generally in the bituminous coal industry, travel time has been excluded from work time.

But the defendants contend that the last contract expired March 31, 1943, and that thereafter, in the absence of contract, the Fair Labor Standards Act applied, and that by virtue thereof travel time became work time. Defendants, by an amended answer, have disclaimed any compensation for overtime prior to April 1, 1943. Plaintiff contends that the contract, which by its terms was to expire March 31, 1943, was continued in force by the parties pursuant to directives of governmental agencies. Certainly,

the parties continued to operate under the contract of April 1, 1943, to the time of the institution of this action. However, it seems to me that the question of whether or not this contract was continued in force and remained binding upon the parties during this period, is neither important nor material. If the Fair Labor Standards Act, from its effective date, required the inclusion of travel time as work time, it did so irrespective of contract, and if there was a contract to the contrary, the contract would be ineffective as against the Act.

What does seem to me important and controlling is that by the universal custom and usage of the past fifty years, and by agreement of the parties in every collective bargaining agreement which was ever made, it was universally recognized that in the bituminous coal industry, travel time was not work time. And this is the condition which prevailed when the Fair Labor Standards Act was enacted in 1938, and of which it must be presumed Congress was aware.

> "It is now a settled principle of statutory construction that Congress or a Legislature, in legislating with regard to an industry or activity, must be regarded as having had in mind the actual conditions to which the act will apply; that is, the needs and usages of such activity."
>
> *United States* v. *Turner Terpentine Co.*, 111 F. (2d) 400, 404.

> [fol. 766] "Usages long established and followed, have, to a great extent, the efficacy of law in all countries. they control the construction and qualify and limit the force of positive enactments."
>
> *Slidell* v. *Grandjean*, 111 U. S. 412, 421.

The contemporaneous construction of the Act by the interested parties in the bituminous coal industry could not possibly appear more clearly nor fully than as set out in the letter of July 9, 1940, written to the Administrator by responsible representatives of the coal operators and the United Mine Workers jointly, and usually referred to as the "Houck letter". In this letter, not only is there no suggestion that by the terms of the Fair Labor Standards Act, travel time must be included in working time; on the contrary, it is positively asserted that any change from

the traditional "face to face" basis would "result in complete chaos, and would probably result in a complete stoppage of work at pratically all the coal mines in the United States"; and "moreover", that *"the very purpose of the Fair Labor Standards Act would be defeated"* by such a change.

This entire letter is so illuminating that I append it *in extenso* as a foot note hereto. [*1]

> "Presumably, Congress refrained from attempting such a definition because the employment relationships to which the acts would apply were so various and unpredictable. And that which is was unwise for Congress to do, this Court should not do. When employer and employee have agreed upon an arrangement which has proved mutually satisfactory, we should not upset it and approve an inflexible and artificial interpretation of the Act which finds no support in its text. * * * "
>
> *Walling* v. *Belo &c.*, 316 U. S. 624, 634. (Italics mine).

CONCLUSIONS

For the reasons set out above, my conclusions of law are:

(1) That the Fair Labor Standards Act of 1938 does not require that there be included within the work week of underground workers in plaintiff's mines, either time spent by such employees outside the portal of the mines before entering therein, or time spent in traveling from the portals [fol. 767] to their usual places of work and return.

(2) That plaintiff, in computing the work week of its underground employees on the basis of hours of work in the mines at their usual working places, exclusive of the lunch period, and the time spent outside the portals and travel time from the portals to their usual working places and return, as provided in the effective wage agreements and continuations thereof, and in paying its underground workers for their services on that basis, has complied with and discharged all its obligations imposed upon it by the Fair Labor Standards Act of 1938.

An order will be entered declaring the rights of the parties in accordance with the above conclusions, and dismissing this action at the costs of the defendants.

(S.) A. D. Barksdale, United States District Judge.

[fol. 768] *Foot Note No. 1

1617 Pennsylvania Boulevard
Philadelphia, Pennsylvania,
July 9, 1940.

Col. Philip B. Fleming, Administrator, Wage and Hour Division, Department of Labor, Washington, D. C.

DEAR MR. ADMINISTRATOR:

As a result of certain investigations which have been conducted by the Wage & Hour Division at bituminous coal mines in Pennsylvania, particularly at the Revloc shaft of the Monroe Coal Mining Company, and a conference that has been held by your Supervising Inspector, Mr. Caffey, at Pittsburgh, Pa., with a committee of the Western Pennsylvania Coal Operators' Association, concerning the application of the Fair Labor Standards Act to the bituminous coal mining industry, certain questions have arisen that are disturbing to both employers and employees within the industry. These uncertainties have been continuing for some time and are causing much concern to the mine workers and the mine operators, especially with reference to "travel time".

Today, the Negotiating Committee of the Appalachian Wage Conference, namely: Messrs. J. D. A. Morrow, President of Pittsburgh Coal Company; L. T. Putnam of the Raleigh Wyoming Mining Company, Beckley, W. Va.; L. C. Gunter, of the Southern Appalachian Coal Operators' Association, Knoxville, Tenn.; Charles O'Neill, President of the United Eastern Coal Sales Corporation, New York City; C. E. Cowan, Vice President of Monroe Coal Mining Company; Frederick H. Knight, counsel for Monroe Coal Mining Company. W. L. Robison, President of the Youghiogheny & Ohio Coal Company and Chairman of the Appalachian Wage Conference on the one hand, and Mr. Earl E. Houck, Director of the Legal Department of the United Mine Workers of America, met with Mr. Dorsey, Regional Director, Philadelphia, Pa., and Mr. Gallagher, Regional Counsel, Philadelphia, Pa., at which time these questions were discussed at length, particularly the application of the Act as to the question of hours of work in the bituminous coal industry.

The mine workers and the mine operators present presented their views to representatives of the Wage and Hour

Division as to the provisions of the Appalachian Wage Agreement covering maximum hours and working time. We have filed with the Division copy of the Appalachian Wage Agreement, and the entire provision as to maximum hours and working time is included therein. The pertinent language, however, is "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis * * *." The Appalachian Wage Agreement is the basic agreement for the bituminous mines in the States of Pennsylvania, Ohio, West Virginia, Virginia, Eastern Kentucky, Southeastern Tennessee and Maryland. In this territory there are several thousand rail shipping mines employing from 300,000 to 325,000 men, and some twenty-three operating districts. Each of the districts work out a local wage agreement covering its own territory, subject, however, to the provision that it must include within it all of the provisions of the Appalachian Agreement. The mines in the Appalachian region produce 70% of the total bituminous coal produced in the United States annually. Also, the Appalachian Agreement is used by the United Mine Workers of America as the basic agreement upon which the district agreements of the remaining 30% of the country is predicated.

[fol. 769] The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time and covers within its general provisions myriad wage rates, conditions of work, and hours of employment. This agreement, with its twenty-three supplemental agreements, constitutes a whole document. In those conferences, of course, hours of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitute the heart of any such agreement. In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside day rate in the North is $.857 per hour, and in the South it is $ .80 per hour. The underground workers are paid on this basis with maximum rates for mobile loading machine operators, approximately $1.09 per hour. In addition, the agreement provides, "work by

mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for it at the rate of time and one-half * * *." It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense.

There are many reasons why the provision as to working time has been set out as provided by this agreement. The impracticability of measuring time by any other method is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places are, of course, close by and near to the opening of the mine. In such cases there is no problem of either transportation of the men, to the working places or time consumed in reaching them; but as mines grow older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working places. This is usually provided by what is known in the industry as "man trips." These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working places throughout the mine, and these trips are also scheduled to leave the inside of the mine when the day's work is done, at the conclusion of the seven-hour period of work at the working places. Among other provisions of the agreement, there is provided a time for starting the day's work and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting time at the various collieries. The agreement provides for a certain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period.

In the many conferences that have been held over this period of fifty years, naturally all manner of suggestions and proposals for amplification or amendment of the agreement has been made both by the mine workers and the operators.

The uniform high rates of pay that have always been included in the wage agreement of the mining industry contemplate the employee's working day beginning when he arrives at his usual working place. Hence, travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898.

[fol. 770] It is urged that any ruling requiring such a change in the custom, tradition and contract provision so as to change the work day from "seven hours' work in the mines at the usual working places" to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States. Such a ruling, moreover, would establish such diversity of time actually spent at productive work as between different bituminous coal mines and within each mine that there would be no basis on which any general wage scales could be predicated, collective bargaining would therefore be rendered impossible throughout this industry, and the very purpose of the Fair Labor Standards Act would be defeated. In such an event, it would make necessary the reassembling of the Appalachian Joint Wage Conference and it would be faced with an issue that would be almost impossible of solution by agreement, resulting in an industrial conflict that could paralyze the nation. This would be a most unhappy result to flow from an act that was passed by the Congress to aid workers in industries that had unreasonably long hours and unreasonably low rates of pay, as contrasted with the short hours and the high rates of pay in the bituminous coal mines. The great amount of money involved in the case of extra payment by the operators or the great changes that would be required in the rates of pay to the miners, should any

change in the present contract be necessary by reason of a new standard for the measurement of time worked, is so serious that a negotiated adjustment would seem to be impossible.

For the foregoing reasons, we believe that your Division should accept the standards of wages and hours of work, and the definition of working time, as set forth in the Appalachian Agreement (which embodies the custom and traditions of the bituminous mining industry), as complying both with the provisions of the Fair Labor Standards Act and of Interpretive Bulletin No. 13, to the effect that "reasonable standards agreed upon between the employer and the employee will be accepted for the purposes of the Act."

We therefore respectfully request that your Division issue a supplement to interpretive Bulletin No. 13, stating that the standard of wages and hours of work, and definition of working time, set forth in the Appalachian Agreement, entered into on May 12, 1940, between twenty-three district associations of bituminous coal operators comprising the Appalachian coal producing area and the International Union, United Mine Workers of America, and the several district agreements based thereon, conform to and satisfy the requirements of the Wage & Hour Act.

Respectfully submitted, For the United Mine Workers of America: (S.) Earl E. Houck, Director of the Legal Department. For the Operators: (S.) W. L. Robison, Chairman; (S.) Charles O'Neill, (S.) L. T. Putnam, (S.) L. C. Gunter, (S.) J. D. A. Morrow, Appalachian Joint Conference Negotiating Committee.

[fol. 771] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA

Civil No. 73

JEWELL RIDGE COAL CORPORATION, a Corporation, Plaintiff,

v.

LOCAL NO. 6167, UNITED MINE WORKERS OF AMERICA, an unincorporated association, affiliated with the International Union, United Mine Workers of America; Harland Hampton, President, John A. White, Vice President, Omer Ketron, Recording Secretary, James W. Belcher, Financial Secretary, C. M. Mathena, Treasurer, Tony Farnese, Door Keeper, Individually and as Officers of said Local No. 6167; Carl Altizer, Omer Ketron and T. V. White, Individually and as Members of the Mine Committee of said Local No. 6167; H. D. Hampton, Tony Farnese, and James Al Smith, Individually and as members of the Safety Committee of said Local No. 6167; Local No. 7327, United Mine Workers of America, an unincorporated association, affiliated with the International Union United Mine Workers of America; J. H. Sheppard, President, J. E. Collins, Vice-President, Forrest Ritchie, Recording Secretary, Josh Keen, Financial Secretary, C. F. Clark, Treasurer, Lyss Patrick, Door Keeper, Individually and as Officers of said Local No. 7327; Josh Keen, J. A. White, and Paul Sykes, Individually and as Members of the Mine Committee of said Local No. 7327; Walter Jackson, J. S. Walker and Glenn Crouse, Individually and as Members of the Safety Committee of said Local No. 7327; District No. 28, United Mine Workers of America, an unincorporated association, affiliated with the International Union, United Mine Workers of America; John Saxton, President, and W. F. Minton, Secretary-Treasurer, Individually and as Officers of said District No. 28; and International Union, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of said International Union, Defendants

JUDGMENT AND ORDER—Filed January 25, 1944

Not being at that time fully advised of its judgment, the Court, on November 24, 1943, having taken time to

consider thereof, as appears by the order entered herein on that date, and thereafter briefs having been duly filed [fol. 772] for both plaintiff and defendants and for Southern Coal Producers Association, *amicus curiae;* and the Court, after full consideration of the evidence, oral argument and briefs of counsel, being now fully advised of its judgment, it is therefore

Ordered

that all objections to evidence, and all motions to strike out evidence, made by counsel during the course of trial and taken under advisement by the Court, be, and the same are, hereby overruled and denied, to which action of the Court in overruling their objections and denying their motions, the parties against whom this ruling is made, by counsel, duly objected and excepted upon grounds heretofore fully stated to the Court;

And the Court being of opinion, for reasons set out in its Findings of Fact and Conclusions of Law this day filed as a part of the record herein, that the law and the evidence sustain the contentions of the plaintiff upon the issues submitted to the Court, doth so adjudge; It is accordingly

Adjudged, Ordered and Declared:

(1) That the Fair Labor Standards Act of 1938 does not require that there be included within the work week of underground workers in plaintiff's mines, either time spent by such employees outside the portal of the mines before entering therein, or time spent in traveling from the portals to their usual places of work and return; and

(2) That plaintiff, in computing the work week of its underground employees on the basis of hours of work in the mines at their usual working places, exclusive of the lunch period, and the time spent outside the portals, and travel time from the portals to their usual working places and return, as provided in the effective wage agreements and continuations thereof, and in paying its underground workers for their services on that basis, has complied with and discharged all its obligations imposed upon it by the [fol. 773] Fair Labor Standards Act of 1938.

And all the objects of this action having been accomplished, defendants being entitled to recover nothing on their counter-claim, it is

Ordered

that the same be, and it hereby is, dismissed at the costs of the defendants; to all of which action of the Court in declaring the rights of the parties contrary to their contentions, and in dismissing this action at their costs, the defendants, by counsel, duly objected and excepted upon reasons fully stated to the Court.

And it is further

Ordered

that the Clerk of this Court certify and mail copies hereof, together with uncertified copies of the Court's Findings of Fact and Conclusions of Law this day filed, to George Richardson, Jr., Esq., 506 Commercial Bank Building, Bluefield, West Virginia, and William A. Stuart, Esq., Abingdon, Virginia, attorneys for the plaintiff, to Crampton Harris, Esq., 1618-20 First National Bank Building, Birmingham, Alabama, Frank W. Rogers, Esq., 306-17 Boxley Building, Roanoke, Virginia, Leonard G. Muse, Esq., 306-17 Boxley Building, Roanoke, Virginia, and Welly K. Hopkins, Esq., United Mine Workers Building, 900 15th Street, N. W., Washington, D. C., attorneys for the defendants; and to Edward R. Burke, Esq., 515 Southern Building, Washington, D. C., and John C. Gall, Esq., 701 Southern Building, Washington, D. C., attorneys for Southern Coal Producers Association, *amicus curiae*.

Enter:

(S.) A. D. Barksdale, United States District Judge.

[File endorsement omitted.]

[fol. 774] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 775] NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT—Filed April 12, 1944

Notice is hereby given that Local No. 6167, United Mine Workers of America, an unincorporated association, affiliated with the International Union, United Mine Workers

of America; Harlan Hampton, President, John A. White, Vice President, Omer Ketron, Recording Secretary, James W. Belcher, Financial Secretary, C. M. Mathena, Treasurer, Tony Farnese, Door Keeper, Individually and as Officers of said Local No. 6167; Carl Altizer, Omer Ketron and T. V. White, Individually and as Members of the Mine Committee of said Local No. 6167; H. D. Hampton, Tony Farnese, and James Al Smith, Individually and as Members of the Safety Committee of said Local No. 6167; Local No. 7327, United Mine Workers of America, an unincorporated association, affiliated with the International Union, United Mine Workers of America; J. H. Sheppard, President, J. E. Collins, Vice President, Forrest Ritchie, Recording Secretary, Josh Keen, Financial Secretary, C. F. Clark, Treasurer, Lyss Patrick, Door Keeper, Individually and as Officers of said Local No. 7327; Josh Keen, J. A. White and Paul Sykes, Individually and as Members of the Mine Committee of said Local No. 7327; Walter Jackson, J. S. Walker and Glenn Crouse, Individually and as Members of the Safety Committee of said Local No. 7327; District No. 28, United Mine Workers of America, an unincorporated association, affiliated with the International Union, United Mine Workers of America; John Saxton, President, and W. F. Minton, Secretary-Treasurer, Individually and as Officers of said District No. 28, and International Union, United Mine Workers of America, an unincorporated association, and John L. Lewis, Individually and as President of said [fol. 776] International Union, the defendants above named, hereby appeal to the United States Circuit Court of Appeals for the Fourth Circuit from the final judgment and order entered in this action on the 25th day of January, 1944.

(S.) Crampton Harris, 1618-20 First National Building, Birmingham, Alabama; (S.) Welly K. Hopkins, 900 15th Street, N. W., Washington, D. C.; (S.) Frank W. Rogers, 306-317 Boxley Building, Roanoke, Virginia; (S.) Leonard G. Muse, 306-317 Boxley Building, Roanoke, Virginia, Attorneys for Appellants.

[fol. 777] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF THE POINTS ON WHICH THE APPELLANTS INTEND TO RELY ON APPEAL—Filed April 12, 1944

The appellants intend to rely on appeal upon the following points:

Point I

The Fair Labor Standards Act of 1938 does require that there be included within the work-week of underground workers in plaintiff's mines all the time from the time such employees are required to report and do report for work at the portal of the mine until they return to the portal at the end of the shift, less the regular lunch period, when they are relieved of all duties.

Point II

The plaintiff in computing the work-week of its underground employees on the basis of hours of work in the mines at their usual working places, exclusive of the lunch period, and the time spent outside the portals, and traveling time from the portals to their usual working places and return has not complied with and discharged all obligations imposed upon it by the Fair Labor Standards Act of 1938.

[fol. 778] Point III

The underground employees of the plaintiff who had workweeks in excess of forty hours per week during the period from April 1, 1943, to June 20, 1943, are entitled to judgment on their counterclaim against the plaintiff for all time in excess of forty hours in each work-week in an amount calculated at 1½ times the regular rate at which such employee was employed together with an equal amount as and for liquidated damages and for a reasonable attorneys' fee to be fixed by the court.

Point IV

The provisions of the Fair Labor Standards Act governing the payment for overtime employment in excess of

forty hours per week and providing an equal amount as liquidated damages and for the recovery of a reasonable attorney's fee apply and govern the payments to which an employee is entitled notwithstanding any custom or contract to pay such employee a less amount as compensation for his services than the Act requires.

(S.) Frank W. Rogers, Leonard G. Muse, Crampton Harris, Attorneys for Defendants (Appellants).

[fol. 779] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 780] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 5246

LOCAL No. 6167, UNITED MINE WORKERS OF AMERICA, An unincorporated association, affiliated with the International Union, United Mine Workers of America; Harlan Hampton, President, John A. White, Vice President, Omer Ketron, Recording Secretary, James W. Belcher, Financial Secretary, C. M. Mathena, Treasurer, Tony Farnese, Door Keeper, Individually and as Officers of said Local No. 6167; Carl Altizer, Omer Ketron and T. V. White, Individually and as Members of the Mine Committee of said Local No. 6167; H. D. Hampton, Tony Farnese, and James Al Smith, Individually and as Members of the Safety Committee of said Local No. 6167; Local No. 7327, United Mine Workers of America, an Unincorporated association, affiliated with the International Union, United Mine Workers of America; J. H. Sheppard, President, J. E. Collins, Vice President, Forrest Ritchie, Recording Secretary, Josh Keen, Financial Secretary, C. F. Clark, Treasurer, Lyss Patrick, Door Keeper, Individually and as Officers of said Local No. 7327; Josh Keen, J. A. White and Paul Sykes, Individually and as Members of the Mine Committee of said Local No. 7327; Walter Jackson, J. S. Walker and Glenn Crouse, Individually and as Members of the Safety Committee of said Local No. 7327; District No. 28, United Mine Workers of America, an unincorporated associa-

tion, affiliated with the International Union, United Mine Workers of America; John Saxton, President, and W. F. Minton, Secretary-Treasurer, Individually and as Officers of said District No. 28, and International Union, United Mine Workers of America, an unincorporated association, and John L. Lewis, Individually and as President of said International Union, Appellants,

versus

JEWELL RIDGE COAL CORPORATION, a Corporation, Appellee

Appeal from the District Court of the United States for the Western District of Virginia, at Roanoke

DOCKET ENTRIES.

April 15, 1944, the transcript of record is filed and the cause docketed.

Same day, the appearance of Crampton Harris, Frank W. Rogers and Leonard G. Muse is entered for the appellants.

[fol. 781] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing volume I, together with a separate volume entitled "Volume of Exhibits" is a true copy of the entire record and proceedings in the therein entitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals.

In Testimony Whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 15th day of April, A. D., 1944.

Claude M. Dean, Clerk, U. S. Circuit Court of Appeals, Fourth Circuit. (Seal.)